SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 735.

JACOB M. DICKINSON, AS RECEIVER OF THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE O. STILES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

FILED OCTOBER 4, 1897.

(20,303)

(26,202)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 735.

JACOB M. DICKINSON, AS RECEIVER OF THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

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GEORGE C. STILES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 29, 1917.

1 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

#2832.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant.

Summons.

The State of Minnesota to the above named defendant:

You are hereby summoned and required to answer the complaint of the plaintiff in the above entitled action, which complaint is hereto annexed and herewith served upon you, and to serve a copy of your answer upon the subscribers at their office in the City of Minneapolis, county and state aforesaid, within twenty days after the service of this summons upon you, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, plaintiff will apply to the court for the relief demanded in the complaint.

GEORGE C. STILES &
D. C. EDWARDS,
Attorneys for Plaintiff, McKnight Building, Minneapolis, Minnesota.

2 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

#2832.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant.

Complaint.

Plaintiff in the above entitled action alleges and respectfully shows to the court:

First. That during all the time hereinafter mentioned The Chicago, Rock Island & Pacific Railway Company was and still is a railway corporation and the owner of a certain interstate railroad, extending from the City of Chicago, Illinois, to the City of Kansas City, Missouri, and passing among other points and places into and through the town or station of Moline, Illinois, at which point said railway company maintained certain railway yards, tracks, spurs, switches and appurtenances.

Second. That on or about April 20th, 1915, certain legal proceedings were had and taken in the United States District Court for the Northern District of Illinois, Eastern Division in equity, in which the American Steel Foundries Company was complainant against The Chicago, Rock Island & Pacific Railway Company, the said United States District Court being a court of competent jurisdiction of the parties and subject matter, wherein one Henry U. Mudge and the defendant, Jacob M. Dickinson were by said United States District Court duly appointed as Receivers of said Railway Company and were thereby authorized to take possession of the property and franchi*es* of said railway company and to manage and operate the same as a common carrier by rail and that said Henry U. Mudge and said Jacob M. Dickinson thereupon accepted said appointment as such Receivers of said railway company and *that* the trust thereby imposed and duly qualified as such Receivers, and thereupon became, on or about April 20th, 1915, the duly and lawful appointed,
3 acting and qualified Receivers of the said railway company; that said Henry U. Mudge thereafter and on or about September 28th, 1915, resigned his said official position as Receiver of said railway company, which said resignation was accepted by said court and became effective on or about September 30th, 1915, but that said defendant Jacob M. Dickinson ever since said April 20th, 1915, has been and now is such said Receiver of said railway company and ever since said September 30th, 1915, has been and still is the sole Receiver of said railway company and as such Receiver has been engaged in business as a common carrier of interstate passengers and merchandise by rail for hire over the line of the said Chicago, Rock Island & Pacific Railway Company.

Third. That at the time of the happening of the accident and injury to the plaintiff hereinafter alleged, this plaintiff was and for several months immediately prior thereto had been in the employ of the defendant in its said railway yards at said Moline, Illinois, in the capacity of railway switchman, with the usual rights and duties commonly incident to such employment, and that at the time of the happening of said accident and injury, both this plaintiff and the defendant were engaged in hauling, moving and switching a string or train of railway freight cars, some of which were loaded with and contained merchandise which originated at points without the State of Illinois, billed and consigned for immediate transportation to and delivery at points within the State of Illinois and points in other states other and different from the State or States of their origin thereof, and that certain other cars in said string or train of cars

were loaded with and contained merchandise which originated at points within the state of Illinois, billed and consigned for immediate transportation to and delivery at points without the State of Illinois, and that at the said time both the plaintiff and the defendant were actively and actually engaged and engaging in interstate commerce.

Fourth. That it was during said time the duty of the defendant as such common carrier to refrain from using, hauling, switching or moving any car not fitted and equipped with couplers which could be uncoupled without the necessity of a man going between
4 the ends of the cars.

Fifth. That the defendant as such common carrier at and in the said railway yards of the defendant at said Moline, Illinois, on the forenoon of March 3rd, 1916, in open and direct violation of its said duty to plaintiff and the requirements of law, did use, haul, move and switch a certain railway car which was not fitted or equipped at one end thereof with a coupler which could be uncoupled without the necessity of a man going between the ends of the cars, that is to say, between the end of said car and the end of the next car to which the same was then coupled and attached, and which said coupler was out of order, defective, inefficient, rusty and broken.

Sixth. That on the morning of said March 3rd, 1916, at the hour of about 11:15 o'clock this plaintiff pursuant to the order and direction of the defendant, while aiding and assisting the defendant in a switching movement of said string or train of freight cars containing said car so fitted and equipped with said defective coupler hereinbefore described, attempted to uncouple the said car with said defective coupler by means of the pin-lifter or pin-lifting device with which the said car was fitted and equipped at the end thereof to which said defective coupler was attached, and which said pin-lifter or pin-lifting or uncoupling device was so fitted and attached to said car, designed and intended to be used for the purpose of uncoupling the said car without the necessity of a man going between the end of said car, and that of an adjoining car, and which said pin-lifter or pin-lifting device was the only attachment, mechanism, instrument or means with which said car was fitted or equipped for that purpose, but was unable to uncouple the coupler of said car from the coupler of the adjoining car, to which the same was then coupled, solely by reason and on account of its said defective, inefficient, rusty and broken condition and ill state of repair, and that plaintiff thereupon, in order to promptly, properly and effectually carry out the said order and direction of the defendant to uncouple said car from said adjoining car as hereinbefore alleged, went between said cars and upon the end of said adjoining car, while the same
5 were in motion, and was in the act of uncoupling the said cars by hand, as he was necessarily obliged to do, in order to uncouple the same, pursuant to the said order and direction of the defendant, and was in the careful and faithful discharge of his duty and in the exercise of all reasonable care and caution for his own safety under the circumstances, when the defendant, without notice or warning, wrongfully and negligently set the said car on which plaintiff was so riding, as well as all the other cars in said train or

string of cars, in sudden, violent and rapid motion and thereby threw this plaintiff from the end of said car to the track and ground below, when his right arm was run over by the wheels of one of said cars and so crushed, wounded and mangled that it became and was necessary to promptly amputate the same at a point between the elbow and shoulder joint and that said arm was accordingly so amputated.

Seventh. That prior to the happening of said accident and injury to this plaintiff so caused as aforesaid by the negligence of the defendant, this plaintiff was in good, sound, bodily health, free from any physical ailment or imperfection, of the age of thirty-three years (33), by trade and occupation an experienced railroad switchman, able to earn and did earn the average monthly wage and income of upwards of One Hundred Dollars ($100), but that solely by reason and on account of said accident and injury, this plaintiff has become permanently maimed, crippled, disabled and disfigured and permanently incapacitated from further following his said trade or occupation of railway switchman, or that of any other trade or occupation requiring the use of both arms and has suffered and undergone great and excruciating pain of body and mind, all tto his damage in the sum of Twenty-five Thousand Dollars ($25,000.00) no part whereof has been paid, though demanded.

Wherefore Plaintiff prays judgment against the defendant in the sum of Twenty-five Thousand Dollars ($25,000.00), together with the costs and disbursements of this action.

GEORGE C. STILES &
D. C. EDWARDS,
Attorneys for Plaintiff, McKnight Building, Minneapolis, Minnesota.

April 4, 1916.

Endorsed: Filed April 27, 1916. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

6 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, Receiver of Chicago, Rock Island & Pacific Railway Company, Defendant.

Answer.

Answering plaintiff's complaint, defendant admits that the Chicago, Rock Island & Pacific Railway Company was and is a corporation organized under the laws of the states of Illinois and Iowa, and

that on March 3rd, 1916, the defendant was and is the sole Receiver of said corporation acting under appointment by the United States District Court. The defendant further admits that on or about March 3rd, 1916, the plaintiff while in this defendant's employ at Moline, Illinois, was injured to an extent to this defendant unknown. All other allegations in the complaint contained, the defendant denied in whole and in part.

Further answering, defendant avers that plaintiff's injuries occurred by reason of and were caused solely by his own neglect and want of care and not by the defendant's negligence, and that on and prior to March 3rd, 1916, the plaintiff assumed the risk of injury.

Further answering, the defendant avers that the plaintiff was at the time of said injury a resident of the state of Illinois and employed by the defendant in the city of Moline in said state and his employment was referrable to the laws of said state and said contract of employment was to be performed therein and all duties and liabilities of the parties were and are controlled by the laws of said state of Illinois and said contract was made in contemplation of the application of said laws to said contract of employment, and in this behalf, the defendant avers that the Legislature of said state did duly enact a certain law known as House Bill No. 841, providing for compensation for accidental injuries suffered in the course of employment within the state of Illinois. Said act is known as House Bill No. 841 and was duly adopted, published, promulgated and afterwards, on the 28th day of June, 1913, duly approved.

7 Said Act is entitled

An act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment within this state; providing for the enforcement and administering thereof, and a penalty for its violation, and repealing an Act entitled "An Act to promote the general welfare of the people of this State by providing compensation for accidental injuries or death suffered in the course of employment"—Approved June 10, 1911, in force May 1, 1912.

To said act of the legislature and to all the terms and conditions thereof reference is hereby made for greater certainty and said act is specially pleaded and made a part of this answer. And the defendant avers that both parties, in compliance with the terms and conditions of said act, have elected to be bound by the terms thereof and it is of full force and virtue and should, in the event of any liability in the premises, control such liability and recovery and in the event of liability, the plaintiff should only be entitled to recover the damages provided in said act and not otherwise in proceedings brought as in said law of Illinois required and as hereinafter stated. Said law is still of full force, effect and virtue.

Said act of said state of Illinois is published in the Laws of Illinois of the 48th General Assembly, 1913, commencing on page 334. In and by the terms of said enactment, provision is made for the appointment and qualification of an Industrial Board, whose duty it shall be to hear, determine and consider the evidence in

respect of the compensation, to which the workmen of any employer in the state of Illinois might be entitled. Provision is made therein for the recovery of specific damages for all injuries to such workmen and by the terms thereof the remedy given by said law is made exclusive and the right to maintain common law actions to recover damages, like those claimed by plaintiff herein, is specifically barred and prohibited. In and by the terms of said law, this action is not maintainable and the remedy of the plaintiff herein is to make application to said Industrial Board and the defendant pleads that the plaintiff should not be allowed to maintain this action because of the remedy given him by said statute of said state of Illinois.

8 Wherefore, the defendant prays that plaintiff take nothing by this action and that defendant have judgment for his costs and disbursements.

STRINGER & SEYMOUR,
Attorneys for Defendant, 800-805 Germania Life Building, St. Paul, Minn.

Endorsed: Filed Dec. 15, 1916. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

9 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

#2832.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, Receiver of Chicago, Rock Island and Pacific Railway Company, Defendant.

Reply.

Plaintiff for reply to the answer of the defendant in above entitled action admits the existence of the statute pleaded in said answer.

Except as above admitted plaintiff denies each and every allegation of new matter in said answer contained.

Wherefore: Plaintiff prays judgment against the defendant as by his complaint he hath demanded.

GEORGE C. STILES AND
D. C. EDWARDS,
Attorneys for Plaintiff, McKnight Building, Minneapolis, Minnesota.

April 25, 1916.

Endorsed: Filed April 27, 1916. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

10 STATE OF MINNESOTA,
County of Hennepin, ss:

District Court, Fourth Judicial District.

#2832.

LOUIS W. HOLLOWAY, Plaintiff,
against
JACOB M. DICKINSON, Receiver of Chicago, Rock Island & Pacific Railway Company, Defendant.

SIR: You will please take notice that the above entitled action will be placed upon the Calendar of the above named Court within ten days after service of this Note of Issue upon you, for the trial of the issue of law and fact by jury.

Yours respectfully, G. C. STILES &
D. C. EDWARDS, ESQS.,
Attorneys for Plaintiff.

Address Minneapolis, Minnesota.

To Stringer & Seymour, Esqs., Attorneys for Defendant. Address St. Paul, Minnesota.

(Endorsed:) Ex. D. Note of Issue. Due service of the within Note of Issue is hereby admitted this 26 day of April 1916. Stringer & Seymour, Attorney- for Defts. Filed Apr. 27, 1916. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

11 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,
vs.
JACOB M. DICKINSON, Receiver of the Chicago, Rock Island and Pacific Railway Company, Defendant.

Stipulation.

It is hereby stipulated and agreed by and between the parties to the above entitled cause that said cause may be dismissed, all costs having been paid.

(Signed) LOUIS W. HOLLOWAY,
Plaintiff.

(Signed) MRS. ANNA BROCKWAY,
Guardian of Louis W. Holloway.

——— ———,
As Receiver of The Chicago, Rock Island and Pacific Railway Company.

Filed Sept. 26, 1916. P. S. Neilson, Clerk, by G. H. Hemperley, Dep-ty.

12 STATE OF MINNESOTA,
County of Hennepin:

District Court, 4th Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant; George C. Stiles, Intervener.

GEORGE C. STILES, Intervener.

Complaint in Intervention.

Comes now George C. Stiles, heretofore by this Court made a party to this action and permitted to intervene therein, and for his complaint in intervention, alleges and shows to this Court:

That he, this intervener, is and during all the times herein mentioned was and has been an attorney and counsellor at law duly licensed as such to practice in all the courts of this State, and that he is attorney for the plaintiff in this action and has been such from the commencement thereof.

That on or about the 8th day of March, 1916, this intervener was employed and retained by said plaintiff to institute, prosecute and conduct the above entitled action for him against said defendant for the recovery of such damages as said plaintiff might be en-
13 titled to recover for certain personal injuries by him suffered and sustained while in the employ of defendant, and specifically set forth and alleged in the complaint of said plaintiff on file in this action, which complaint is hereby referred to and all the allegations thereof made a part of this intervening complaint with like force and effect as though set forth in full herein. That D. C. Edwards, whose name is signed to said complaint and who has been associated with this intervener as one of the attorneys of record for plantiff in this action, became such solely at the request of this intervener, upon the understanding and agreement that he should be compensated for his services in this cause by this intervener and make no charge therefor against plaintiff, and said Edwards does not now and will not make or assert any claim or demand against plaintiff for any services by him performed in this action. And he, the said Edwards, has already filed in this Court his disclaimer of any interest in the sum due this intervener for his services or for his disbursements as herein alleged and set forth.

That at the time of said retainer and employment of this intervener, it was mutually agreed by and between him and said plaintiff that as compensation for the services of this intervener rendered as the attorney of said plaintiff in this action, this intervener should receive and be paid a sum equal to one-third of the amount finally

received or recovered from said defendant, either by suit or by compromise or settlement of the plaintiff's cause of action set forth in his complaint.

14 And it was also at about the same time mutually agreed between plaintiff and this intervener that he, this intervener, should receive out of any sum so realized by this suit or by said settlement of said cause of action, such moneys as he, this intervener, should disburse, pay out, loan or advance to or on behalf of said plaintiff prior to such recovery or settlement.

That this intervener has in all things performed and fulfilled all the terms and conditions of said agreements between him and said plaintiff on his part to be done or performed; that pursuant thereto he brought this action on behalf of said plaintiff by causing the service of the summons and complaint herein to be made upon the defendant on or about the 4th day of April, 1916; that defendant answered said complaint, a copy of his answer thereto being attached to the motion of this intervener for the Court's order making him a party to this action, which is on file, and that a reply to said answer was duly served by this intervener upon the attorneys of said defendant, which reply is also on file herein with the Clerk of this Court. And this intervener makes said answer and reply and the allegations thereof a part of this intervening complaint with like force and effect as though the same were set forth in full herein.

That after the service of said complaint and reply, a note of issue herein was duly served by this intervener upon the attorneys of said defendant, and said cause was duly placed upon the calendar of this Court for trial, and the same, until the pretended settle-

15 ment hereinafter set forth, was upon the calendar of this Court for trial at the pending term thereof.

That the services of this intervener rendered and performed for said plaintiff in this action under and pursuant to his said retainer and employment and his said contract with plaintiff first above mentioned, were well and reasonably worth not less than the sum of $2,166.66. And that since his said retainer and employment by plaintiff, and pursuant to his said agreement hereinbefore alleged, with respect thereto, and prior to the settlement hereinafter alleged, this intervener disbursed, loaned, paid out and advanced to and on behalf of said plaintiff the aggregate sum of $221.21.

That while the said action was pending and was so upon the calendar of this Court for trial, and on or about the 23rd day of August, 1916, said defendant, without any notice to this intervener, and without his knowledge or consent, entered into negotiations with plaintiff, for the purpose of making a settlement with him of his said cause of action and thereupon paying to him directly the full amount agreed upon in settlement thereof, thereby defeating or seeking to defeat this intervener's lien upon said cause of action and wholly depriving him of any compensation for his services herein and of his costs, disbursements, loans and advancements made to and on behalf of plaintiff as herein alleged. And thereupon said defendant did in fact effect with said plaintiff a settlement and compromise of plaintiff's said cause of action, and

16 obtained from him a purported release thereof for the sum

of Sixty-five Hundred Dollars ($6,500), which sum defendant paid to plaintiff or to his representative acting in his behalf pursuant to such settlement, compromise and release and in consideration therefor on or about said 23rd day of August, 1916.

That this intervener has not received any sum whatever from plaintiff or from any other person for his services in said cause or for any moneys so disbursed, loaned, advanced and paid out by him for and on behalf of said plaintiff, who has removed from this state and is no longer a resident thereof, and has no money or property whatsoever except the money paid to him by defendant as aforesaid, which money this intervener is informed and believes has already been placed beyond the control of said plaintiff. And this intervener further alleges that said settlement and release was so made by said plaintiff and said payment so made to him without the consent of this intervener and in the face of his most vigorous protest to the defendant that no settlement or payment should be made such as would deprive this intervener of compensation for his said services or the repayment of his said disbursements, and after notice had been given by him to said defendant of his said agreements with said plaintiff and his lien upon said cause of action, as herein alleged and set forth. And said settlement, release and payment were so obtained and made by defendant in bad faith and with the intent and purpose to
17 thereby cheat and defraud this intervener out of his said fees and compensation in this action and out of his said disbursements, advances and loans so made by him to plaintiff. And by reason of the facts aforesaid, at the time of such settlement and compromise and of said release by plaintiff of his said cause of action and of said payment made to him by defendant therefor, this intervener had and still has an attorney's lien upon the said cause of action for his services rendered as aforesaid, in the sum of $2,166.66, and for his costs, disbursements and advances so made to plaintiff and in his behalf, which costs, disbursements and advances aggregate the sum of $224.24, and a cause of action for the recovery thereof from said defendant.

Wherefore, this intervener demands judgment against said defendant for the sum of Twenty-four Hundred Ninety and 90/100 Dollars ($2,490.90), with interest thereon from the 23rd day of August, 1916, and for his costs and disbursements herein.

Dated November 24th, 1916.

BROOKS & JAMISON,
Attorneys for said Intervener.

610 Minn. Loan & Trust Bldg., Minneapolis, Minnesota.

Filed Jan. 13, 1917. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

(Title of Cause.)

Answer of the Defendant to Intervener's Complaint.

Answering intervener's complaint in intervention, the defendant admits that intervener was and is a duly licensed attorney at

18 law, but denies that he ever had any authority from the plaintiff to commence or prosecute this action and denies that intervener ever had any contract for the payment of his fees either as alleged in his said affidavit or otherwise.

Further answering, defendant avers that intervener and one A. A. Roe, who was not and is not a lawyer or attorney or admitted to practice law in any state of the United States, at all times had and now have a contract or agreement or arrangement, the exact nature of which is unknown to this defendant, but by which it was understood and agreed between intervener and said Roe, that said Roe would solicit for intervener personal injury cases in the states of Illinois, Iowa, Minnesota and elsewhere, and that in consideration of said solicitation of cases by said Roe, intervener would pay to said Roe a percentage of whatever recovery or settlement was had in any case so solicited and obtained by said Roe.

The cause of action alleged in the complaint arose within the state of Illinois and the plaintiff was at all times herein stated a resident and citizen of the state of Iowa and the defendant was and is a resident and citizen of the state of Illinois and appointed as Receiver by the United States District Court of Illinois.

Acting pursuant to said unlawful and champertous agreement between intervener and said Roe, said Roe did, on behalf of said intervener shortly after March 3, 1916, solicit within the state of Illinois the case of said plaintiff's injuries and did then and

19 there within the state of Illinois induce said plaintiff to sign an instrument, the exact nature of which is unknown to the defendant, but which defendant is informed and believes purported to give intervener authority to commence this action and purported to agree to pay intervener one-third of whatever recovery or settlement was had. Intervener and said Roe represented and stated to said plaintiff and agreed with him that intervener would pay and advance to plaintiff money during the progress of the trial, which money should be repaid to intervener only in the event of a recovery or settlement and out of the money so received and that intervener would pay all costs and expenses of the litigation, and that said plaintiff need nor repay the same and intervener would hold the plaintiff harmless from all costs and expenses of litigation in the event there was no recovery; but in the event of recovery or settlement, intervener might deduct said costs and expenses from said recovery. Any expenses paid and advances made by intervener to said plaintiff were made upon such terms and not otherwise. Said pretended agreement and authorization by the plaintiff to intervener was and is wholly unlawful, champertous and void, and contrary to public policy, and save and except for the same, intervener never had any contract with the plaintiff or any authority to commence this action. At the time plaintiff made said void and unlawful and champertous agreement with intervener, plaintiff was insane, under the

20 influence of drugs and in great pain and suffering, and did not understand the effect of the instrument which he had signed.

Thereafter, during the month of August, 1916, in proceedings

duly pending in the District Court of Linn County, Iowa, which county was and is the place of residence of the above named plaintiff, in a certain matter entitled "In the matter of the Guardianship of Louis W. Holloway, a person of unsound mind," which court then and there had jurisdiction of the parties and of the subject matter and was duly vested by the laws of the state of Iowa with jurisdiction to appoint guardians of insane persons and to administer the estates of insane persons, said court did duly appoint one Mrs. Anna Brockway, a sister of this plaintiff, the guardian of the person and estate of the above named plaintiff and did adjudge and decree that said plaintiff was of unsound mind and insane, and in this behalf the defendant avers that, at the time the plaintiff signed said void, champertous and unlawful instrument, which purported to be an agreement with said Stiles, he was of unsound mind and insane. Upon the appointment of said Anna Brockway as guardian of said Louis W. Holloway, he at once repudiated said pretended agreement made by said plaintiff with intervener on the ground that it was null, void, champertous and unlawful and on the ground that it was made with a person who was then and there of unsound mind and insane, and did advise intervener that he had not then and never had any authority to commence or prosecute this action. And thereafter, said Anna Brockway made
21 claim against this defendant for damages for the injury to the plaintiff, and did retain counsel in the state of Iowa, to prosecute said cause of action; and thereafter at the solicitation and request of said guardian and with the full consent, authority and approval of said district court of Linn County, Iowa, said guardian did settle said cause of action of said Louis W. Holloway against this defendant. Prior to such settlement, the said District Court of Linn County, Iowa, duly entered its order approving and directing such settlement be made, and pursuant to such settlement, said guardian caused this action to be dismissed. This defendant specifically denies that he ever settled the cause of action alleged in the complaint with the plaintiff, although defendant admits that the same was settled with his guardian, and that because of said settlement with said guardian, plaintiff's cause of action has been adjusted, settled and extinguished.

All allegations in the complaint in intervention not herein admitted, the defendant denies in whole or in part.

Wherefore, this defendant prays that intervener take nothing by this action and that defendant have judgment for his costs and for such other and further relief as may be proper.

STRINGER & SEYMOUR,
Attorneys for Defendant.

800-805 Germania Life Building, St. Paul, Minnesota.

Filed Dec. 15, 1916. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

22 (Title of Cause.)

Reply to Defendant's Answer to Intervener's Complaint.

Now comes George C. Stiles, the above named intervener, and for his reply to the answer of the defendant to the intervener's complaint herein, denies each and every allegation, matter and thing in said answer contained, except as the same admits allegations of said complaint.

Wherefore this intervener demands judgment as prayed for in his complaint in intervention herein.

Dated December 14th, 1916.

BROOKS & JAMISON,
Attorneys for Said Intervener.

610 Minn. Loan & Trust Bldg., Minneapolis, Minnesota.

Filed Jan. 13, 1917. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

(Title of Cause.)

Settled Case.

The above entitled cause came regularly on for trial before Hon. Horace D. Dickinson, one of the judges of said court, and a jury, on the 12th day of January, 1917, and was tried on that and subsequent days up to and including the 19th day of January, 1917.

Messrs. Brooks & Jamison and Mr. D. C. Edwards appeared as counsel in behalf of the intervener, and Messrs. Stringer & Seymour and Kerr, Fowler, Schmitt & Furber appeared as counsel in behalf of the defendant.

23 A jury having been duly empaneled and sworn, the following proceedings were then had:

Mr. Edwards opens the case to the court and jury in behalf of the intervener.

GEORGE C. STILES, the intervener, having been duly sworn, testified as follows:

Examined by Mr. Edwards:

(It is stipulated and agreed that the original summons and complaint, the original answer, the original reply, and the original note of issue in the case of Louis W. Holloway, as plaintiff, v. Jacob M. Dickinson, as Receiver of the Chicago, Rock Island & Pacific Railway Company, as defendant, may be introduced in evidence as if fully and properly identified, as Exs. A, B, C and D.)

Q. Your name is George C. Stiles?
A. It is.
Q. Where do you live, Mr. Stiles?

A. This city, at 2801 Lake of the Isles boulevard.

Q. For how long have you been living in Minneapolis?

A. About 27 years.

Q. And during all that time engaged in any business calling or profession?

A. Practicing law.

Q. You are regularly admitted to practice in all the courts of the state of Minnesota?

A. I am, and have been during that time.

Q. Are you the George C. Stiles who is named as intervener in the case where Louis W. Holloway is plaintiff and Jacob M. Dickinson, as Receiver of the Chicago, Rock Island & Pacific Railway Company, is defendant?

24

A. I am.

Q. Mr. Stiles, what branch or branches of your profession do you specialize in, if any?

A. Negligence cases, involving damages for loss and damage to shipments of perishables, such as carload lots of fruit, produce and the like, carload lots and train lots of livestock, and damages for personal injuries, principally to employes of railway companies.

Q. And for how long have you been specializing in these branches of your profession?

A. For at least 25 years.

Q. You are the George C. Stiles who was the attorney, and who appears in the record as the attorney for Louis W. Holloway, the plaintiff in this case?

A. I am.

Q. That is, the case of Holloway against J. M. Dickinson, as Receiver of the Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir.

Q. When did you first meet Louis W. Holloway?

A. Sunday morning, April 2, 1916.

Q. Where?

A. I think at the office of Dr. A. H. Parks, in this city. I know I met him there that morning. Whether I met him at the Rogers Hotel (to which he first came that morning before going to the office of Dr. Parks) or not, I do not recollect.

25

Q. What was the occasion of your meeting Mr. Holloway at that time and date?

A. For the purpose of meeting him in person and forming his acquaintance, as I had never before met him, ascertaining his exact physical condition, and arranging for such necessary surgical and hospital care and attention as his condition required, under the advice and direction of Dr. Parks.

Q. Had you at any time prior to the date of this meeting been employed or retained by Holloway to prosecute any case or cause of action of his? If so, when?

Mr. Stringer: That is objected to as calling for a conclusion, and not the best evidence.

The Court: Overruled.

A. I was.

Mr. Stringer: Just a moment, Mr. Stiles. Was your retainer in writing? Was any arrangement made in writing between you and Mr. Holloway?

Witness: Both in writing, and orally.

Mr. Stringer: Then I object to the question as calling for a conclusion, and not the best evidence.

The Court: He may answer it Yes or No.

A. Yes, I was.

Q. And in what manner had you been retained by Holloway?

Mr. Stringer: Same objection.

The Court: Whether the contract was in writing or otherwise?

26 Mr. Edwards: That is all preliminary to asking whether it was in writing or otherwise.

The Court: Answer.

A. By written contract prior to April 7th.

Q. And on what date was that contract entered into?

A. It bore date March 8, 1916.

Q. And signed by you personally, or by some one for your account?

A. Signed by Mr. Holloway in person when delivered to me, and signed by me in person when I accepted the contract on April 7th, five days after his arrival in the city.

Q. Do you at this time have that contract in your possession?

A. I have not.

Q. Where is the contract?

A. I do not know.

Q. When did you last have that contract in your possession that you know of?

A. I am unable to fix the exact day, but it was right at the time of the institution of those intervention proceedings.

Q. And where?

A. At the office of Judge Brooks, in his private office, while conferring with him.

Q. Have you with you a true and correct copy of that contract?

A. I have.

Q. Have you made a search for the original?

A. I have very diligently searched, both at the office of Judge Brooks and in my own private office, safe, office of the file

27 clerk and bookkeeper, and everywhere where I suspected it might be misplaced or mislaid, but was unable to find it. A duplicate of this contract was in the possession of Mr. Holloway when he came to my office, and produced by him at that time, and he still has it, so far as I know, unless it is attached to his deposition here.

Q. Had that contract been signed by you?

A. Not prior to April 7th,—that is, in person. The contract produced by Mr. Holloway at the time,—the duplicate of the contract

which I signed on April 7th at my office,—the duplicate of that contract bore the signature of Mr. Holloway and my name by Mr. Roe—Mr. A. A. Roe, a representative and an employe of mine.

Q. And what date did that contract, signed with your name by Mr. Roe and by Mr. Holloway, bear, if you remember?

A. March 8, 1916.

Q. Have you the contract to which you have just referred in your possession at this time?

A. Not the original. I have an exact duplicate or copy of it, prepared by me today, on a standard blank form, which I uniformly employ, or did until within the last month uniformly employ in cases of this kind when retained by clients.

Q. When did you last have the contract to which you have just referred as having been signed March 8th by Mr. Holloway, and your name by Mr. A. A. Roe, as you remember? When did you last have it in your possession?

28 A. I never had it in my possession except to see it. It was exhibited to me by Mr. Holloway when he was in my office April 7th. A duplicate of that contract, except that it did not bear my name, was signed by me on that same occasion, at my office, on April 7th, when I accepted the retainer and employment. That is the contract which I lost or mislaid, and which I lost when I was at the office of Judge Brooks when we were preparing the papers in these proceedings, and which I then put in my file, as I recollect it, and took with me from his office, but have been unable to find it since. I have with me an exact duplicate of that contract prepared by me a few minutes ago while here in court.

Q. I hand you Intervener's Ex. E and ask you to state if it is a true and correct copy of the original contract which was signed by Holloway on April 7th by yourself?

A. It is an exact copy, with this possible exception: I do not recollect to a certainty whether the duplicate of this contract bore the words "Moline, Ill.," or not. I think not, but I am not certain.

Q. At what point?

A. Before the date "March 8th, 1916."

Intervener's Ex. E offered in evidence. Received without objection, and read to the jury.

Q. Mr. Stiles, pursuant to that contract did you institute suit for the account of Mr. Holloway?

A. I did.

Q. And against the Chicago, Rock Island & Pacific Railway Company, or against its Receiver?

29 A. Against Jacob M. Dickinson, as Receiver of that railway company.

Q. And did Mr. Holloway have read in his presence the complaint which was drawn against the Receiver of the Rock Island?

A. He did; and I think I gave him a copy of the complaint.

Q. Do you now remember, Mr. Stiles, whether or not the original contract, of which this is a true and correct copy, contained in it at

any point mention of the fact that the suit and claim was against Dickinson as Receiver of the Rock Island?

A. It did not. By inadvertence or oversight the word "Receiver" was left out. It was stated simply as against the Rock Island. But the railroad at that time, and at the time of the happening of the accident to Holloway, was in the hands of Jacob M. Dickinson, as Receiver, doing business as a common carrier, and it was understood between Mr. Holloway and myself that the action was against the Receiver. As I said, a copy of the complaint was given to Mr. Holloway, I am certain, it being my uniform custom to deliver a copy of the complaint to the client after the commencement of the action.

Q. At the time, Mr. Stiles, that a duplicate of the contract brought by Holloway to your office was signed by you on April 7th, in your office, the original of this Exhibit E, did you have any conversation with Mr. Holloway respecting the suit, or respecting matters in connection with it, and advances pending its termination?

30 Mr. Stringer: Just a moment. We object. Of course, if this is only preliminary——

Mr. Brooks: He may answer Yes or No.

Mr. Stringer: Well, I object to that question as leading.

The Court: He may answer it.

A. Yes.

Q. You did have a conversation at that time, Mr. Stiles?

A. I discussed with him very fully the terms and conditions upon which I was to handle this business for his account.

The Court: When was that? Did the question embrace the time? How is that?

Witness: April 7th.

Mr. Edwards: April 7th, the time that the duplicate contract was entered into by Mr. Stiles—signed by him.

Q. Just what was said by you to Mr. Holloway, and by him to you, on the subject of advances or loans to be made by you to him pending the final settlement or determination of his suit in court?

Mr. Stringer: Just a moment. That is objected to as incompetent, irrelevant and immaterial, not in any way binding upon the defendant, and immaterial for that reason. No matter what was said on that, we cannot tack on loans as a lien upon a cause of action. The statute says that an attorney may have a lien on the cause of action for his compensation, and our supreme court has extended that, if extension were necessary, to include sums expended, neces-
31 sarily and properly, in the conduct of the litigation. But there is no authority that I know of, either by express or implied agreement, whereby a litigant and his attorney can create a lien on the cause of action for money loaned and advanced. I, therefore, object to it as incompetent.

The Court: Well, to the extent of the loans the objection sounds good.

Mr. Brooks: The point about it is this: It being conceded that moneys paid for proper purposes and under proper conditions may be included, it would seem to me that advances must necessarily be made by some understanding or agreement with the plaintiff in the case. We have a right to show that there was such an understanding, and that the money should be paid with his consent; and, then, the question of what items may be included will come later.

Mr. Stringer: The objection to that is that it is not in the pleadings. There is no agreement alleged other than the original agreement. I do not find it, at least.

The Court: I find in Folio 5: Any sums that the intervener "should disburse, pay out, loan or advance" was agreed upon. The agreement may be shown.

Mr. Stringer: Exception.

(The question was read.)

A. On April 7th, when Mr. Holloway called at my office to talk over the subject of his case and the business of its prosecution and handling by me through my office, I talked with him upon
32 the subject of the manner in which his accident had happened and the character and strength of his claim, and upon the subject of advances necessary for his living expenses while the action was pending, and advances for the prosecution of the action, its necessary preparation and trial. He stated to me at the time that he had no money—was absolutely without any means whatever, even for his traveling expenses from Moline to Minneapolis, and that he was without any means of maintaining the action, either of paying the costs for necessary filing fees, service, the taking of depositions, traveling and other expenses of an investigator to gather the facts at Moline, where the accident happened, interviewing his witnesses, or for his necessary living expenses,—board, lodging, clothing and the like,—that he would be obliged to depend upon me to advance them while the action was pending. I stated to him that I would be willing to make the necessary advances for all those purposes, and for no other, with the understanding that he should repay them, in the first place, out of the avails of the litigation, whether the action were settled or tried and a judgment secured; that the repayment of these advances, both as to loans and the payment of his board and lodging, for the preparation of the case, including court costs, taking depositions and the like,—the repayment of those items was not to depend upon the result of the litigation; that if, for any reason, I should fail to secure a satisfactory settlement of his case, or upon trial of his case I should fail to recover a verdict or judgment, that he
33 should, when able, repay me for those loans or advances exactly the same as though they were loaned to him by a stranger or a bank, with the single exception that I would not charge him any interest for any loans made to him or any advances, as I had never done so to any disabled client yet and would not do so in his case. At that time I told him that it would be necessary, for my protection and for his, for him to place these statements—among others which I have not been asked about and shall not attempt to

state now—he should place them in writing by way of an affidavit, to be signed by him and sworn to before a stranger, a disinterested notary public, setting forth these facts. And, then, I called a stenographer, after he stated he understood them fully and assented to them, and said they were satisfactory and fair and agreeable to him,—I, then, called one of my stenographers, and I dictated an affidavit to her, in his presence and hearing, and, when through, asked if that fully and fairly and honestly stated the facts exactly as he understood them and as we had agreed to them. He said that it did. I, then, had the statements typewritten, brought in, and delivered to him a copy of it, (it was made in duplicate), and asked him to go with one of my representatives (I have forgotten which one; I think it was Mr. Roe; Mr. Roe was present at this conversation, and Mr. Ray G. Baker, a client of mine, at that time having a personal injury case pending in my office) I asked him to go, I think with Mr. Roe, to some notary in the building, and they
34 left my office for that purpose, and shortly returned with the affidavit signed by Mr. Holloway, and, also, signed and sealed by a notary public on our floor there, one Mr. Drennan, I believe.

Q. Was there ever at any time, Mr. Stiles, any other or different understanding, either by oral conversation or in writing, between you and Holloway respecting the advances of loans or expenses other than the one that you have just described in your testimony?

A. Not any.

Q. In order to save any misunderstanding on the subject of this contract, Mr. Stiles, let me ask you if the date it bears is the date on which the original, of which that is an exact copy, was signed by Mr. Roe, and if that original was a duplicate original of one which was brought by Holloway to your office on that day and signed by you on April 7th, instead of March 8th, the date it bears?

A. It is an exact copy of that contract, which original contract bore date of March 8th, and was, as I then understood from Mr. Holloway and Mr. Roe, executed at Moline by Mr. Roe, for my account, and by Mr. Holloway for his own account, on March 8th.

Q. But signed by you——

A. A month later, at my office, I signed the du-licate myself, in the presence of Mr. Holloway, Mr. Roe and Mr. Baker, on April 7th, the same date when the affidavit was made and signed by Mr. Holloway, to which I have just testified.

Q. So, Mr. Stiles, that duplicate original, of which this is
35 a copy, which was signed by you on April 7th, bearing date March 8th, was an exact duplicate of the original which was signed "George C. Stiles, by A. A. Roe," is that so?

A. Yes.

Q. And this copy, which is in evidence, is a copy of both the original and duplicate original which you signed on that date, except for those differences which I have just pointed out,—may have contained the name "Moline, Ill.," is that so?

A. Yes.

Q. Now, Mr. Stiles, you did institute suit for Holloway against Mr. Dickinson, as Receiver of the Rock Island, did you not?

A. I did.

Q. Outline just what was done by you in connection with the institution of the suit, from the time you drew the pleadings and served the summons and complaint.

Mr. Stringer: That is objected to as irrelevant and immaterial under the pleadings. This is an action based upon an express contract. He said he began suit. Now, what he said, in the line of work, is immaterial.

Mr. Brooks: We have alleged both contract and quantum meruit in this complaint.

The Court: Objection overruled.

Mr. Stringer: Exception.

A. On either April 4th or 5th, and, in any event, between the date of the arrival of Mr. Holloway in Minneapolis and the date of my conference in my office with him on April 7th, and I
36 think on April 4th, I prepared the summons and complaint in an action against the Receiver of the Rock Island Railway Company to recover damages for personal injuries sustained by Mr. Holloway, resulting in the loss of his right arm at or near the shoulder, in an accident at or near Moline on March 3, 1916, and caused this summons and complaint to be served upon this defendant in that action. Thereafter I received an answer from the defendant, appearing through its attorneys, Stringer & Seymour of St. Paul, to which I interposed a reply in the usual course, as required by the rules of law and practice in this state, and served it upon these attorneys, together with a note of issue, so-called, which amounts to a notice to the defendant that the action would be brought up for trial in the regular course, and caused all these papers, except the answer of the company, to be filed in the office of the clerk of this court as promptly as it could well be done, and without delay.

Q. During the pendency of the action did you from time to time, see Holloway with respect to the facts upon which it was based?

A. On several occasions Mr. Holloway——

Mr. Stringer: I would like the record to show our objection to all this line of questioning, Your Honor.

The Court: Very well.

A. On several occasions Mr. Holloway called at my office to consult and confer with me upon the subject of his case or claim, and to ascertain how it was progressing, whether I had had any
37 negotiations with the company looking to peaceable settlement, and what I was doing and what had been done; also conferred with me upon the facts in the case, the manner in which his accident had happened, the witnesses by whom it could be proved, and requested me to send an investigator to Moline for the purpose of examining into the facts, interviewing witnesses, securing statements from them as to the facts and how the accident had happened, and in all ways and things taking such necessary steps as my judgment dictated should be taken for the purpose of properly and promptly preparing his case for trial, and for negotia-

tions for settlement out of court, if that could be had. There were a number of such conferences, and, pursuant to them, I did send Mr. Roe, a representative and employe of my office, to Moline to investigate the facts in his case, and had him investigate them and report them to me, paying and advancing his salary for his services for that work, as well as all necessary traveling and incidental expenses incurred by him in getting these facts and statements, and preparing the case for trial for Mr. Holloway,—and all at his request. In addition to these——

Q. Had you concluded your answer, Mr. Stiles?

A. Well, if the inquiry called for all services rendered, I have not.

Q. No; I had in mind following that up. Did you, after suit was instituted and while it was pending, and prior to your learning anything about any settlement having been made with Mr.
38 Holloway direct, have any conversation with any officer or agent of the defendant respecting the matter of settlement in this case?

A. I did.

Q. With whom?

A. With Mr. Palmer, general claim agent for the defendant.

Q. How long have you known Mr. Palmer?

A. I should say since about the 1st of June,—around the 1st of June; possibly a few days before or after. He came to my office and introduced himself.

Q. And in the handling of this business, and business of a similar character, you had got acquainted with him as the general claim agent of the Rock Island line?

A. Yes, I know him to be such.

Q. When did you see Mr. Palmer with reference to the suit here involved?

A. About the 1st of June.

Q. And what, if anything, was said between you on the subject of this suit?

A. I do not recollect, except that the subject of adjustment of the claim was talked over in a general way. As I recall it, he asked me what I would accept in settlement, or what Mr. Holloway would accept in settlement, and I think at that time I told him——

Mr. Stringer: Just a moment. I object to any statement as to the amount as irrelevant and immaterial,—if that is what you are leading up to, Mr. Stiles.

39 Witness: I was about to state what we would accept in settlement, or the amount I would recommend Mr. Holloway to accept in settlement.

Mr. Stringer: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Stringer: Exception.

Witness: I claim no advantage for it. I will state it in this way, if you prefer: We discussed the subject of peaceable settlement of

the case, and I gave him my idea as to its merits and legal strength, and what I thought would be a fair and legal settlement, and asked him to take it up with the officers of the company, or Mr. Dickinson, (as he said he would have to in so large and important a case), and advise me as to whether he would pay me that amount; if not, the amount he would be willing to pay, which he promised to do. That, I think, is the substance of that conversation on that occasion.

Q. And did you later see Mr. Palmer on this same subject?

A. I did.

Q. And on how may different occasions?

A. I saw him on two subsequent occasions, the first subsequent occasion being a few weeks later when he called at my office in company with Mr. Stringer—Mr. Ned Stringer, the attorney for the defendant here now,—to talk over the subject of peaceable settlement of the Holloway case, and on that occasion, in the presence of Mr. Stringer, we went over that subject quite
40 fully. And I, then and there, in my office in the McKnight building here, exhibited to Mr. Palmer, though I think not to Mr. Stringer, (who was sitting some distance from my desk, and Mr. Palmer sitting immediately across the flat top desk in my office from me), this contract, of which Exhibit E is a copy, and the original affidavit, which I described awhile ago as having been signed by Mr. Holloway, and he read them both through, and on that occasion and at that time made an offer by way of peaceable settlement of the case.

Q. Now, Mr. Stiles, on either of these three occasions, June 1st or either of the two subsequent occasions, when you met Mr. Palmer and discussed this subject with him, did you inform him in any way on the subject of advances made to Holloway, naming any amount that you had advanced to him in this case,—say anything about that, and, if so, what?

Mr. Stringer: That is objected to as irrelevant and immaterial. The law fixes the rights of the parties.

The Court: All on the question of notice?

Mr. Edwards: Certainly, Your Honor.

Mr. Brooks: They make a point here that they didn't know anything about this agreement for advances. We want to show that they did.

Mr. Stringer: It doesn't make any difference whether we knew anything about them or not. He has a lien for certain advances; he has no lien for others. Now, the question of notice is immaterial, because the question of notice is provided for by statute.
41 We are chargeable with notice of a lien as to compensation, and I think we are chargeable with notice of such advances as are proper.

The Court: Do I understand you plead no notice?

Mr. Stringer: Of what?

The Court: Of this claim of advances.

Mr. Stringer: Well, we have a general denial. That is our posi-

tion—we knew nothing about them; but whether we did or not does not make any difference.

The Court: Well, I don't see as it will do you any harm. I will permit it. Go ahead.

Mr. Edwards: You may answer, Mr. Stiles.

A. I did.

Q. What was said by you to Mr. Palmer on the subject of advances to Holloway pending the outcome of the suit which you had instituted, either by way of settlement or procedure to judgment, on either of those occasions, or all of them?

Same objection; same ruling.

A. I did not state to him any definite sum or amount which I had loaned to Mr. Holloway, but stated to him that I had loaned to him and advanced for the preparation of his case for trial in all the sum, as I recollect, of about $450. In truth and in fact, I am not certain that that is a fact; but it is my recollection that in this general conversation I simply stated to him and Mr. Stringer, generally, that I had advanced and loaned in all about $450, but did not pretend to tell them that that was the exact amount, because I
42 had no occasion to look it up, as they came directly into the office and started to talk about it.

Q. On which one of those occasions did you so inform Mr. Palmer on this subject?

A. I am not absolutely certain whether it was the occasion when Mr. Stringer was there, or when Mr. Palmer was alone. My impression is that Mr. Palmer came again after the joint conference between myself, Mr. Stringer and him. But I am reasonably sure it was while Mr. Stringer was there that that was mentioned when we talked over the amount of the lien, and asked about my fees, and my willingness whether they should settle with him alone—which you haven't asked about.

Q. Did you talk with Mr. Palmer about the repayment of those advances by Holloway?

Same objection; same ruling.

A. I don't remember.

Q. If you did?

A. I am not sure.

Q. But you did show the affidavit which Mr. Holloway had signed?

A. Yes, I did; I did that, because he commented on it. But I do not remember that he said anything about these loans or advances. I wouldn't say that I had told them that I had an express agreement with Mr. Holloway about *their* being a lien on his cause of action, or anything of that sort; I don't think I did.

Q. When did you first learn that negotiations looking to a settlement of this case between Mr. Holloway and the company direct was being made, and from whom?

43 A. I am quite sure my first knowledge of that was on the occasion that Mr. Stringer and Mr. Palmer called at my office.

Q. That is, that they were then negotiating direct with Holloway for settlement, irrespective of your rights in the premises,—that is my question.

Mr. Stringer: That is objected to as leading, and calling for a conclusion of the witness.

Mr. Edwards: I will withdraw it.

Q. When did you first learn, Mr. Stiles, that negotiations looking to a settlement of the case, without reference to your rights in the premises, were being made between the defendant and the plaintiff?

Mr. Stringer: That is objected to as calling for a conclusion, and assuming a fact not shown by the evidence.

Mr. Edwards: Why, it is admitted that there was a settlement.

The Court: He may answer.

A. I was informed on the occasion when Mr. Stringer and Mr. Palmer called at my office that negotiations had been instituted between Mr. Holloway and the company, and I think between Mr. Palmer, as claim agent for the company, or for the Receiver, and Mr. Holloway and his sister, a Mrs. Brockway, to settle the case; and he then told me at that time, in the presence of Mr. Stringer, there being no one else present in my office during this conference, that they could settle the case direct for $6,000. And I asked them if they surely could settle it direct for $6,000, and no more,
44 and Mr. Palmer replied "Well, a few hundred dollars—just a little more for some expenses," which he did not mention, and I think he said "about two or three hundred dollars more than $6,000." He then asked me if I would be willing to accept that amount for Mr. Holloway in settlement, and said that if I would that he would be willing to pay that amount to me in settlement. I asked him if he thought there was some reasonable chances of his coming to me and getting me to accept the amount which he had already told my client he would pay and not pay me any fee, and he laughed, and said—well, he didn't know, but thought he would come over and see whether I would be willing to take the same amount and pay it to my client and waive my fee. And I, on that occasion, I told him not only was I unwilling to waive my fee, which I had earned, but that I had also advanced in loans and necessary expenses for the preparation of the case a sum amounting to about $450, as I remembered it then,—and said I was unwilling to waive my fee. But if he had already seen Mr. Holloway and secured from him an expression that he was willing to accept $6,000, or two or three hundred dollars more,—that if that was satisfactory to Mr. Holloway, it certainly was satisfactory to me, and that he could do as he liked with it,—I would never stand in the way of a settlement between a client and the railway company. After having fully and fairly advised my client as to his legal rights, and

giving him my opinion as to what his case was worth,—if in the face of that he was willing to make a settlement for less, I
45 was willing that it should be done provided I would be paid my fee on the basis of that settlement. And he asked me if I would insist upon my fee, and I said I did; that the law of this state gave me a lien for my services; that I recognized the right of Mr. Holloway to make a settlement behind my back, and that if he thought and the claim department thought it fair to make that direct, they might do so, but I should certainly insist upon the payment of my fee upon the basis of that settlement, and particularly so in this case because, in my judgment, they were making a settlement for an unreasonably small amount, considering my services and lien. He asked me what I thought would be a fair settlement, and what I would be willing to accept, and I told him I would be willing to recommend to Mr. Holloway, as I had already done, to accept $9,000 by way of peaceable settlement, and nothing less. He then stated that he felt that he had done all he intended to do, and that he intended to go ahead and make a settlement with Mr. Holloway regardless of my lien and claim for attorney's fees and expenses, and that he should certainly do on his return to Chicago if they were stiill of the same mind—that is, Mr. Holloway and his sister, and that he felt that my lien was absolutely worthless in law and no good and unenforceable. I told him that I felt very certain that it was an extremely good and valid lien, and that I should certainly undertake to enforce it according to the law if he made this settlement without taking care of my fees. If they had
46 denied any liability to Mr. Holloway,—told him they owed him nothing and paid him nothing, and after taking the case in my office and preparing it for trial, and my conference with him he had experienced a change of heart and felt there was a liability for $6,200, I thought I had done a good day's work for my client——

Mr. Stringer: You are repeating what took place?

Witness: Yes. It took place in your presence. And, then, he said that I was the only person whom he was able to find who thought my lien was good, and that he should not respect it,—in which opinion I believe you agreed, Mr. Stringer, with the gentleman at the time.

Q. And that was on the date of your last conference with Mr. Palmer, in Mr. Stringer's presence, in your office?

A. It was not; but it was at the conference with Mr. Palmer and Mr. Stringer, but not my last one with Mr. Palmer.

Q. The last conference you had with Mr. Palmer was in your office, or by some other means? And when did you have it?

A. At my office a short time after the conference with Mr. Stringer and Mr. Palmer. Mr. Palmer called again in person and alone to talk over the subject of the settlement of the Holloway case, stating that it had not yet been settled, and he wanted to know again how I felt about it. Shall I tell you what took place then?

Q. Go into that conversation, please.

47 A. I again told him that I thought a settlement for $9,000 was a fair and reasonable one in the case, and that I was responsible for making him feel that the case ought to be settled for a substantial amount. He did not say anything to that, but he stated that a Mr. Lockwood, a former employe of the firm of Stiles & Devaney, had been to see Mr. Holloway and his sister, and had arranged to have a guardian appointed,—as Mr. Lockwood had done on prior occasions in other cases of mine which he had taken over and arranged for settlement without my consent after his discharge; that he had in this case also appointed a guardian, and appointed his sister. And I am not so sure but he told me this in the conversation in which Mr. Stringer was present,—that the guardian had been appointed, or proceedings for the appointment of his sister, Mrs. Brockway, had been instituted. In any event, he told me that she had been appointed guardian, and that Mr. Lockwood had carried on these negotiations for this settlement, and that he was representing both Holloway in the negotiations, and was looking to him for compensation, but he also wanted to represent the railway company, or Mr. Palmer's office; and Mr. Palmer said that if he closed the arrangement with this gentleman, Mr. Lockwood, who wanted a commission *on* percentage for his services in bringing about this settlement under me, that he would take care that he put in writing his contract with that gentleman, after he saw and knew how he dealt in those cases with me, so as to protect himself; and that he
48 could settle the case through Mr. Lockwood with these people for something over $6,000, and, he said again, as I recall it, about two or three hundred dollars more. He then again asked me if I would not accept that amount myself and make the settlement. I told him I couldn't do that. Then he asked me what I would take. Well, I said: "In view of the fact that you have involved this business now by bringing Mr. Lockwood in here and letting him negotiate for you and these other people behind my back to make this settlement, and I am going to be involved in a lawsuit, either with my client or with you, I am willing to cut my fee very substantially in order to get out from under this mess. If you persist, and you are going to deal with Lockwood and these folks and ignore my contract and fight me," I said, "you are certainly going to get me to settle for less than I am legally entitled to. If you pay me $8,000, and my client will accept $6,000, then you may settle the case with me." He said he did not see any reason why he should do that. He could settle with these folks for a little over $6,000 direct, and the expenses of Lockwood, and he didn't see any reason why he should pay me $8,000,—and did not think my lien was any good, but would go back to Chicago, and asked me to take it up with my client, and arrange for a settlement with Mrs. Brockway, his guardian. And I accordingly did so; I sent Mr. Roe to Cedar Rapids, at which point Mr. Holloway and his sister were then located. About the 15th of August, as I recollect it, Mr. Roe went down there. I cannot
49 say what took place, but, anyway, I received telegraphic authority from Mrs. Brockway to do business on a certain basis.

Mr. Stringer: Just a moment, Mr. Stiles. That is objected to as not the best evidence.

The Court: Objection sustained.

Witness: The telegram is in the files.

Q. Before we go into this matter of the telegram which you have just mentioned, Mr. Stiles,—you did take up with the Holloway and Brockway people the subject of your conversation with Palmer?

A. I did,—by telephone and through Mr. Roe.

Q. Then subsequently to this last conversation between you and Mr. Palmer at your office did you have any other conversation with him on this subject?

A. I did not.

Q. Not in your office; but did you by phone or otherwise?

A. By phone.

Q. And when with reference to the date of your last conversation?

A. Very promptly,—I can say within a day or two days, possibly,—by telephone to him at his office in Chicago.

Q. When did you first learn, Mr. Stiles, that the Holloway case had been settled?

A. I do not recollect the date; but I received a letter from Lockwood, or his firm, Lockwood & McGreevy, advising me upon that subject. The letter is in the file.

Q. When did you last see Holloway?

50 A. I think it was in June.

Q. Do you now know where Holloway, the plaintiff, is?

A. No, I do not.

Q. Is he a resident of Minnesota?

A. He is not. The last information I have upon the subject of his whereabouts is a deposition given by him in this case, purporting to have been taken, as I recollect it, at Cedar Rapids, Iowa,—taken some ten days ago.

Q. At the time you first discussed the matter with Holloway at your office did you then learn from him where his home was at that time?

A. Well, I think he stated that he made his headquarters at Cedar Rapids, Iowa; had a sister living there, and a father and mother, I think, living there. But he was sort of a free lance, working about the country, from place to place, in railroad work.

Q. Mr. Stiles, what was the nature of Holloway's injury? Just generally.

A. The loss of his right arm close to the shoulder.

Q. Did he tell you at that time that that injury had been caused while he was employed by the Rock Island? And was it by reason of that injury that suit was instituted?

A. He did say that he was injured through the negligence of his employer, the Receiver of the Rock Island Railway Company, and it was to recover damages for that injury, which occurred on March 3, 1916, that I was employed by him, and for which I brought

51 the action, the summons and complaint in which have been introduced in evidence here as Exhibit A.

Q. Did Holloway at that time state to you what his occupation had been and what his monthly earning power was immediately prior to the time of his injury?

A. Yes, he did.

Mr. Stringer: Just a moment. That is objected to as hearsay, irrelevant and immaterial, and in no way does it tend to prove any of the issues of the case or any of the allegations of the complaint.

The Court: Well, the question is has he talked that over with him,—or did you ask for the details?

Mr. Edwards: I asked him what he said on that subject as to his earning power.

Mr. Brooks: Suppose, Your Honor, there had been a conversation concerning the subject matter, it would be competent if it occurred before this settlement. Whatever claim Mr. Stiles had against Mr. Holloway at the time of that settlement for his services in this case is a claim which he can recover from this railroad company, and it is the same as though the suit were now against Holloway—had been brought against Holloway at the time of that settlement, and all the negotiations and all the conversations that were had between Mr. Stiles and Mr. Holloway, and every declaration on the part of Mr. Holloway upon which Mr. Stiles could base a right to recover against Holloway by reason of the settlement is covered here in this case, which is an action to enforce that right as against the
52 railway company. And they had constructive if not actual notice of all these conversations which gave rise to the right on the part of Stiles to recover from Holloway,—every circumstance upon which he bases his claim, and they assumed the burden when they settled this case.

The Court: I don't see how you can escape from that position, so I will overrule the objection, Mr. Stringer.

Mr. Stringer: Exception.

Q. And what did he say upon both of those subjects, Mr. Stiles?

Mr. Stringer: Same objection.

A. He stated that he had been in the employ of the defendant in the capacity of switchman from, I think, the 15th day of February until March 3, a little less than three weeks, and said that his employment was at the rate of about one hundred dollars a month, stating it in cents per hour, as I recollect it, but that it would amount, if steadily employed, to about one hundred dollars a month, and that he usually earned about that amount; also stated his age at the same time, and he was a young man in the thirties,—single, I think he said, at the time.

An adjournment was taken at this point until the following Monday morning.

Morning Session, Monday, January 15, 1917.

GEORGE C. STILES, recalled, and direct examination resumed.

By Mr. Edwards:

Q. Did you ever have any meeting with any representative
53 of the claim department of the defendant company other than Mr. Palmer on the subject of settlement—or a discussion of the Holloway case?

A. Yes, I think Mr. Miller—a gentleman named Miller called upon me early in the summer.

Q. Had you met Miller before?

A. I think not.

Q. Did he state what his connection with the defendant company was at that time?

A. I think he said he was traveling claim agent for the company, or assistant claim agent.

Q. And did you have any discussion about the Holloway case particularly at that time?

A. I think he called to take up the subject of settlement, asking me what we would accept by way of settlement if we settled the case, and I think I told him at the time $12,000.

Q. That was before your meeting with Mr. Palmer or after?

A. I think that is the first time the subject of settlement was taken up at all, as I recall. I can't remember these dates,—claim agents of various roads are calling at my office all throughout the year—I haven't any recollection as to the date, but it is my recollection it was early in June that he called and we talked settlement.

Q. Now, at the time of your meeting with Holloway in Dr. Parks' office, did you have any discussion with him at that time with regard to the facts in this case?

A. Yes.

54 Q. What was that conversation?

Objected to as incompetent, irrelevant, immaterial, and in no way binding on the defendant.

Objection overruled, and exception by defendant.

A. I asked him as to the manner in which the accident happened—what he claimed the facts were, in brief, and he stated them to me substantially as they are stated in the complaint, to make it short.

Q. Did you have any conversation at that time upon the subject of your proceeding with the suit based upon the facts?

A. I did.

Q. What was that conversation?

A. This was after he had been thoroughly examined and his arm dressed by Dr. Parks, and he was taken into the waiting room and laid down to rest, and we then talked the case over—as well as to how the accident happened—as to whether he desired me to go ahead

and place the claim in suit, as I understood I had not received absolute authority from him to go ahead and place the claim in suit.

Mr. Stringer: I move to strike the last part of the answer out as stating a conclusion and not responsive to the question.

The Court: What portion of it?

Mr. Stringer: Beginning with "as I understood."

The Court: Strike it out.

Witness: I stated to Mr. Holloway that I did understand
55 that he did not wish me to go ahead and place his claim in suit until he came to Minneapolis and he had met me and Dr. Parks and gone over the case and made up his mind and decided whether he would have me take the case up or not. He stated to me that was the understanding with Mr. Roe. And I asked him whether he wished me to go ahead, and he said "Go ahead and commence suit as soon as possible," or words to that effect, which I did, some three days later, I think.

Q. The suit was instituted after that date and before the date of his signing the duplicate contract, our Exhibit E?

A. Yes.

Q. Or after?

A. As I recall it, it was started on April 4th.

Q. In your conversation with Mr. Palmer, or conversations with him, did you at any time talk over the subject of your charge to Holloway in the case—your basis of handling the matter for him?

Objected to as irrelevant and immaterial.

Objection overruled.

A. I did.

Q. What was your conversation on that subject?

Mr. Stringer: Same objection.

Q. When did it take place?

Mr. Stringer: Which question are you asking?

Q. When did you have this conversation, Mr. Stiles?

A. On the occasion of Mr. Palmer's first call at my office.

56 Q. And what was that conversation?

Same objection; same ruling.

A. I told him at that time I was handling Mr. Holloway's case upon a contingent fee basis,—upon one-third of the amount to be recovered either by suit or settlement; and this was the usual and customary charge made by myself in such cases, and by all other attorneys who made a specialty of handling such claims,—none less, some more. I don't think that at that time I said anything about my arrangement to advance money to Mr. Holloway for his living expenses or surgical and hospital care and attention; at least I don't remember it.

Q. Mr. Stiles, taking into account the years of practice you have

had in specializing on the handling of cases of the character here involved, and taking into account all the circumstances testified to by you in connection with the handling of this particular case, you may state what is the usual and customary charge made for the handling of a case of this character where it is dependent upon the outcome of the litigation?

Mr. Stringer: That is objected to as incompetent, irrelevant and immaterial, and not within the issue.

The Court: Overruled.

A. The usual and customary charge in such cases is not less than one-third. There are rare exceptions when sometimes the best of attorneys qualify the arrangement for one-third to accept 25 per cent in a case of prompt peaceable settlement, but these,
57 under ordinary circumstances, are rare. Usually the charge is a straight third, and frequently more than a third,—often 50 per cent. I, however, have never charged to exceed one-third, as I can recollect, in such a case.

Q. Mr. Stiles, taking into account all your services in connection with the handling of this particular case, including your conferences with the plaintiff, the discussions of the case with the claim department of the defendant, and all other services performed by you in connection with this matter, I will ask you whether you know the fair and reasonable value of those services?

A. This case, considering the results secured——

Mr. Stringer: Just a moment. The question is whether you know.

Q. Taking into account all the circumstances connected with this case from the time it first came into your office until the settlement was made,—and taking into account the outcome of the litigation, and all the circumstances testified to by you.

A. I think I do.

Mr. Stringer: What is the question?

Mr. Edwards: Whether or not he is able to state the fair and reasonable value of his services in this connection.

Witness: I think so. I, at least, have a pretty clear opinion upon that subject as a lawyer.

Q. And what is your opinion upon that subject, Mr. Stiles?

Objected to as incompetent, immaterial, and not within the pleadings.

58 Objection overruled.

A. Not less than $2,150.

Q. Mr. Stiles, did you pay out any money in the actual preparation for trial of this case,—any expenses in connection with its being prepared for trial?

A. I did advance considerable money for Mr. Holloway for that purpose.

Q. Do you now remember what the advances were, or what they were to cover, confining yourself not to the amounts but to the

subjects that they were to cover in the preparation for trial of the case? Can you remember?

A. Yes. The fee of the clerk for filing the pleadings,—want the amounts as I go along?

Q. I will get them later; or, if you want to, you may give them now.

A. One dollar. The expenses of Mr. Roe to go to Moline and vicinity to investigate the facts,——

Q. And the amount?

A. A trifle over $16. The real expense, however, was quite largely in excess of this, but he had other things to do, so I divided the total expense and charged him half, which was less than might have been charged. Hospital bill for care and treatment of Mr. Holloway on his arrival here,——

Q. And the amount of that?

A. I think $42.

Mr. Stringer: I wish the record to show, may it please the court, that we take the position that that is not lienable. I suppose it is proper to state it.

The Court: Yes I understand. What was that figure?

59 Witness: I think it was right around $42, as I recall it. Traveling and incidental expenses of Mr. Holloway and Mr. M. S. Lamb, who accompanied him as his caretaker,—traveling and incidental expenses coming from Moline to Minneapolis.

Q. And the amount of that item?

A. It was a trifle over $84.

Mr. Stringer: We take the same position with reference to that item.

The Court: Yes, that may be understood.

Witness. To Mrs. Brockway, his sister, for traveling expenses, I think a little over $6, in coming to Minneapolis to confer with me and her brother Louis, the plaintiff in this case, around about the 1st of June. Cash to Mr. Lamb for his services in accompanying Mr. Holloway to Minneapolis and remaining with him here for a short time, and return, and his incidental expenses, either $65—I think right around $65,—that is practically it.

Q. At whose request, if at anybody's request, did you pay Lamb for his services in that connection?

A. I cannot say at the request of any one, but with the understanding and mutual consent of Mr. Holloway and myself.

Mr. Stringer: I move to strike the answer out, may it please the court, as a conclusion.

The Court: Strike it out.

Q. What is the fact with respect to the payment of the $65 item to Lamb as to the arrangements made in that connection?

60 A. The fact is that he came here at the request of Mr. Holloway.

Mr. Stringer: I move to strike that out as no foundation laid, and hearsay.

The Court: Granted.

Witness: I have not completed my answer.

The Court: Complete your answer then, Mr. Stiles.

Witness: The fact is that Mr. Lamb came here at the express request of Mr. Holloway,——

Mr. Stringer: May it please the court, that is giving a conclusion.

The Court: He wanted to complete his answer, that is all.

Mr. Stringer: Then I think it is prejudicial to allow it to go on when it is obvious from the portion of the answer already given that there is no foundation laid, and that it is a conclusion and hearsay.

The Court: I assume that the balance of it would not be objectionable, perhaps, on that ground. If it is of the same character, Mr. Stiles, you might as well omit it.

Witness: I hardly think it is. I can state it to the court and not in the presence of the jury.

The Court: Anything transpired between you and Holloway concerning it?

Witness: This is exactly what transpired between Mr. Holloway and me upon this subject, at the office of Dr. Parks, on Sunday, April 2nd,——

The Court: Go ahead.

Witness: That Mr. Lamb had accompanied him at his
61 request, and that he had written a letter to that effect asking me to send money to him for their expenses, and which he had done prior to that.

Mr. Stringer: I move to strike that out, may it please the court. If there is any such letter, it should be produced.

Witness: There is not only such a letter, but Mr. Holloway said he had written such a letter to Mr. Lamb.

The Court: The conversation with Mr. Holloway may remain, the rest will be stricken out.

Witness: And I told—or I think it was Mr. Roe told Mr. Holloway that he thought Mr. Lamb should be paid for his services for his helping him, and coming up and caring for him, and his remaining, and he asked him if he wanted him to remain to take care of him, and he said Lamb had been a very good friend, spent a lot of time in caring for him, and that he thought he ought to be paid, and for us to make an arrangement to pay Mr. Lamb whatever was a fair rate. Pursuant to this I paid Mr. Lamb $65. May have been seventy-five: but not to exceed seventy-five.

Q. Was that paid for your own account, or for the account of Mr. Holloway?

A. For the account of Mr. Holloway.

Q. Any other items which you have not mentioned, Mr. Stiles?

A. Cash loans to Mr. Holloway.

Mr. Stringer: Just a moment. I object to that as irrelevant and immaterial.

Witness: Just a moment,—including payments for his board and lodging while here.

62 Mr. Stringer: The same objection. Cannot take that on.

The Court: No, I don't think it can be. Sustain the objection.

Mr. Edwards: Note an exception.

Q. Mr. Stiles, I appear as one of the attorneys of record in the original proceeding. Under our arrangement does D. C. Edwards have any interest in the proceedings between you, as intervener, and the Rock Island?

Mr. Stringer: I will agree that you have not.

The Court: It is agreed, then, that you have not.

Q. Mr. Stiles, have you ever been paid any amount of money for your services in connection with your handling of this case, by Holloway or by anybody else? Have you been paid any amount of money by anybody for the advances which you have made in the preparation of this case?

A. I have not.

Q. Neither for expenses nor for services?

A. For neither.

Q. Did you ever at any time, Mr. Stiles, agree or consent to the settlement of this case with Mr. Holloway without arrangement being made for payment of your fees for services?

A. I did not.

Q. Did you make any arrangement with the defendant here, or any of his representatives?

A. Never made any such arrangement. On the contrary, I protested against the settlement without the payment of my fees as provided by my contract.

63 Q. With anybody?

A. With no one.

Mr. Edwards: You may inquire, Mr. Stringer.

Cross-examination.

Examined by Mr. Stringer:

Q. Mr. Stiles, you say you have practiced law here in Minneapolis for about 27 years; and during that time you have been engaged, as a specialty, in prosecuting claims for livestock and loss of perishable fruit and personal injury cases, is that correct,—principally?

A. It is.

Q. Now, up to five years ago your principal business was the prosecution of the first two, that is, perishable fruit claims and stock claims, was it not? You did not go into the personal injury business much prior to that time?

A. Several years prior to that time.

Q. How long ago did you first take up personal injuries?

A. The first month of my practice in the city of Minneapolis I

commenced and had an important personal injury case, and had them, in fact, from time to time every year, and frequently every year to the present time.

Q. But it was within the past five years that your personal injury business has greatly increased, is it not?

A. It has rapidly increased in the last seven years.

Q. Now, about ten years ago you were in the firm of Stiles,
64 Devaney & Hewitt, was it not? Wasn't it about that time that that firm was formed?

A. I think so.

Q. And that firm continued up to about seven years ago, approximately, when Mr. Hewitt withdrew, and from that time the firm was continued as Stiles & Devaney, was it not?

A. It was, down to the 1st of January, 1916.

Q. Now, the firm of Stiles & Devaney was engaged in the same specialty which you state yourself now as being engaged in personally?

A. It was.

Q. Their offices up to two years ago, as I remember it, were in the Andrus building, after which time they removed into the McKnight building, isn't that correct?

A. Yes, sir.

Q. And you have continued to use the same offices that the firm used before Mr. Devaney retired?

A. All excepting four rooms, which I recently released,—on the same floor, and the same suite number.

Q. And you have continued in your specialty in the same manner in which the firm went into it before, is that correct?

A. I have continued the same specialty.

Q. And in the same manner?

A. What do you mean by that?

Q. Practicing law in the same manner,—the same organization?

65 Objected to as immaterial.
Objection sustained.

Q. In the firm of Stiles & Devaney, how many were in your office force?

Objected to as immaterial.
Objection sustained.

Q. Mr. Edwards, who is trying this case, is associated with you, is he not, Mr. Stiles, as an attorney? He is in partnership with you?

A. No.

Q. And who else is there in your office force?

A. Mr. P. A. Horton.

Q. Is he a lawyer, Mr. Stiles?

A. He is not. He is a farmer. Mr. Albert A. Roe——

Q. Is he a lawyer?

A. If one learned in the law is a lawyer, Mr. Roe is.

Q. I take *it* your answer to mean then that he is not admitted to practice?

A. Not to my knowledge. Mr. Harry I. Benon,——

Q. Is he a lawyer?

A. In the same sense only that Mr. Roe is,—not admitted to practice to my knowledge. Mr. Stephen C. Lush,——

Q. Is he a lawyer?

A. Only in the same sense. But D. C. Edwards, who is trying this case,——

Q. He is a lawyer?

A. I think he is.

Q. Is that all of your office force, Mr. Stiles?

66 A. I have a lady bookkeeper and three lady stenographers. Care for their names?

Q. Not at this time, no. Now, all these gentlemen whom you mention were employed by you when you were with the firm of Stiles & Devaney, and by the firm, is that correct?

Objected to as immaterial.

Objection sustained.

Q. How long has Mr. Roe been associated with you, Mr. Stiles?

A. Well, surely three years; I am inclined to think about four years.

Q. And how long has Mr. Horton been associated with you?

Mr. Brooks: I think I will object to this, Your Honor.

The Court: I will sustain the objection.

Q. Now, Mr. Stiles, you stated, I believe, that the first time you saw Mr. Holloway was April 2, 1916?

A. It was.

Q. At Dr. Parks' office in this city?

A. Either there or at the Rogers Hotel, and I am inclined to think at the latter place.

Q. How long did you talk with him at that time?

A. Probably 20 minutes,—12 or 20 minutes.

Q. And, then, he was examined by the doctor,—or examined first?

A. First examined.

Q. Now, at that time who was present?

A. Mr. Roe, Mr. Lamb, Dr. Parks, Mr. Holloway and myself.

67 Q. And who was Mr. Lamb?

A. Mr. Lamb? He is the gentleman who accompanied Mr. Holloway from Moline here.

Q. How long had you known him?

A. Since the morning of April 2nd, Sunday, 1916.

Q. Had you ever seen him before that time?

A. No, sir.

Q. Had any correspondence with him before that time?

A. Never—just a moment. Yes, I had.

Q. You had correspondence?

A. Yes.

Q. In a business way?
A. Yes.
Q. Did he ever represent you in any way?
A. Never.
Q. Ever paid him any money before?
A. Never.
Q. Now, at that time, as I understood you, there was produced a duplicate of the contract between Holloway and yourself?
A. When?
Q. At the time of this conversation.
A. No.
Q. Well, you spoke of that contract being produced. When was it produced?
A. At my office.
Q. And who produced it?
A. Mr. Holloway had his, and I had mine.
Q. And where did you get yours?
A. From Mr. Roe in the first instance.
68 Q. And when did Mr. Roe give it to you?
A. I don't remember.
Q. Have some idea of it? Was it a few days before?
A. I haven't any recollection as to whether when he returned from Moline, after seeing Mr. Holloway on March 8th, he delivered me this contract, or whether he gave it to me the morning Mr. Holloway came here.
Q. Well, for some little time you had your duplicate original which was signed by Holloway but not by you?
A. Yes.
Q. And Holloway's contract was signed by Holloway, and by you through Mr. Roe, is that correct?
A. Yes.
Q. And so far as you know, that was signed—Mr. Holloway's contract was signed on March 8th?
A. That is my recollection.
Q. Mr. Roe had complete authority to sign this contract for you, did he not?
A. He did.
Q. The only thing that you did with respect to signing this contract was to write your own name on your own contract?
A. That is all.
Q. Mr. Roe was your representative in obtaining this contract, was he not? You considered that he had authority to execute the contract in your behalf?
A. He did have such authority.
69 Q. Yes. And to execute similar contracts?
A. Yes.

Mr. Brooks: I object to that as immaterial.
The Court: Sustained.
Mr. Edwards: I move to strike the answer out.
The Court: Well, it may stand.

Q. In the course of the year, Mr. Stiles, Mr. Roe brings you a good many contracts of this kind, does he not?

Mr. Brooks: Objected to as immaterial.

The Court: Objection sustained. It is admitted he had authority to sign this one. That is all that is necessary.

Mr. Stringer: If Your Honor please, we offer to show by this witness that Mr. Roe, who has been mentioned here, was employed by Mr. Stiles and engaged in the business of soliciting contracts of this character, and that he did, pursuant to instructions and advice and solicitation, obtain a great many contracts of this kind. That is material in view of the denial in the reply of the fact of solicitation of this case. If solicitation were admitted, it would be one thing, but we have a right to go into the entire method and manner of doing business as throwing light on the probabilities as to whether or not this was solicited in view of the denial. Now, there is going to be, apparently, a conflict of testimony. The manner and method of doing business are very weighty and potent evidence as to that question of fact. In that view it is material.

The Court: Well, you have the liberty of putting him on
70 for cross-examination under the statute at a later time.

Mr. Stringer: I do not understand that the objection was made that it was not proper cross-examination. The objection was made that it was immaterial.

The Court: Well, I should think it was at this time.

Mr. Brooks: To make the record complete, Your Honor, we will object to the offered testimony for the reason that the same is immaterial, incompetent, irrelevant, and not within the issues raised by the pleadings in this case, and not proper cross-examination. There is not the slightest allegation here as to the course of dealing. The allegation is that this particular contract was solicited by Roe. That is all there is to it.

The Court: I will sustain the objection at this time. We cannot go too far afield unless it is necessary. If it becomes pertinent, why I presume he can be examined later.

Q. Now, Mr. Stiles, you stated that (I think the date was April 7th; correct me if I am wrong) there was an affidavit signed by Holloway, is that correct?

A. Yes, sir.

Q. Have you that affidavit here?

A. I assume my counsel has it.

Mr. Stringer: Will you produce it?

Mr. Edwards: I believe not. I do not think we should be required to produce the affidavit at this time.

71 Mr. Stringer: I demand, and give notice of the requirement, that the affidavit be produced.

Mr. Edwards: And I note in the record that as a privileged communication handed to me by my client that I will not produce unless the court rules adversely.

Mr. Schmitt: Well, your client has testified to what he claims the affidavit is. I think we have a right to see it and examine him with reference to it.

The Court: I believe not, under the rule.

Mr. Edwards: At the proper time we will be very glad to introduce it.

Mr. Stringer: Well, we want to see it now. It is proper cross-examination.

The Court: We won't compel its production.

Mr. Stringer: Exception.

Mr. Edwards: Let the record show that the document is in my possession as the intervener's attorney.

Q. Mr. Stiles, will you produce the affidavit?

A. I will not. I haven't it.

Q. Is it in your attorney's possession?

A. I believe it is.

Q. Will you obtain it from your counsel and produce it?

A. I will not; but I will let him produce and offer it at his convenience during the trial of this law suit.

Q. Why will you not produce it?

A. Because I am advised by my counsel not to at this time. Strategic reasons, I believe, my counsel says, they have for it.

72 Q. How many times did you see Holloway? By the way, the first time you saw him was on April 2nd?

A. Yes, sir.

Q. You commenced suit on April 4th?

A. I believe that is the date.

Q. The next time you saw him was on April 7th?

A. I think so.

Q. And when was the next time you saw him?

A. I couldn't fix but one definite date thereafter. I saw him many times.

Q. How many times did you see him?

A. Probably 20.

Q. And how long did your conversations last on each occasion?

A. Some a minute, to five or ten minutes each.

Q. You had never seen Holloway prior to the time that he came here on April 2nd?

A. The first time I saw him was on April 2nd.

Q. And had you ever heard of him before that?

A. Yes.

Q. From whom had you heard of him?

A. From himself.

Q. Have you any letters from him?

A. Yes.

Q. Will you produce them?

Mr. Brooks: I object to that as improper cross-examination.

The Court: Overruled.

A. I hand you the letter I have in mind.

Mr. Brooks: Counsel for Mr. Stiles states if counsel for
73 defendant desires to offer the affidavit of Mr. Holloway referred to in the testimony of Mr. Stiles, it will be produced for that purpose.

Mr. Schmitt: We have not seen the affidavit, and ask the privilege of seeing it for the purpose of cross-examination of the witness; and we cannot agree to offer it in evidence in advance.

The Court: Well, that is a matter for counsel.

Mr. Brooks: We are not particular. If they want to see it, they can see it, and we will offer it ourselves.

(Document produced is marked Dft.'s Ex. 1.)

Q. I show you Dft's Ex. 1 and ask you if that is the affidavit signed by Mr. Holloway to which you referred?

A. It is.

Q. Who is the notary before whom the acknowledgment was taken—the affidavit was taken?

A. He is an adjuster and claim agent for the Bankers Surety Company, on the tenth floor of the McKnight building.

Mr. Stringer: I offer in evidence the affidavit as a part of the cross-examination.

Received without objection.

Q. You have notaries in your office, I take it, Mr. Stiles?

A. Mr. Edwards is a notary public.

Mr. Brooks: I suppose the jury is entitled to know what it is.

(Dft.'s Ex. 1 read to the jury by counsel.)

Q. Why did you go, Mr. Stiles, to a notary public out of your office?

74 A. I did not go at all.

Q. Why did you have the affidavit sworn to before a notary outside of your office?

A. That its execution might be as nearly unquestioned as the testimony of a stranger and disinterested officer might make it if it were ever attacked.

Q. Why did you think it might ever be attacked?

A. Because I suspect men like Mr. Holloway when dealing with the Rock Island Railway Company. I anticipate and expect it in all cases where I deal with that company.

Q. You sent Mr. Roe with Mr. Holloway to have this affidavit signed?

A. I don't know whether it was Mr. Roe, or who it was.

Q. You didn't go yourself?

A. I did not.

Q. You sent some one from your office?

A. I did.

Q. Didn't you state on your direct examination that it was your invariable custom to take affidavits of this kind?

A. I don't recollect whether I did or not. It is my usual custom to take similar affidavits.

Q. From all your clients?

A. Not all.

Q. Practically all?

A. Yes.

Q. This affidavit was dictated by you, I believe you stated?

75 A. Yes.

Q. In your office in the McKnight building?

A. Yes.

Q. In whose presence, did you say?

A. That of Mr. Roe, and Mr. Baker, and Mr. Holloway, and the stenographer. In that connection I will state there are four stenographers, instead of three, and the bookkeeper.

Q. I notice you put in here, Mr. Stiles, in the last clause, that he is to repay all loans upon demand the same as any other loans. You, of course, knew he did not have any money to repay in event the case was lost, did you not?

A. Yes, at that time.

Q. So you were kind of facetious with him, were you not, when you said he was to repay them in the affidavit?

Mr. Edwards: That is objected to as not proper cross-examination and immaterial.

The Court: If he had had it there wouldn't have been any necessity for the loan.

Q. In your complaint in intervention, Mr. Stiles, which is sworn to, you put in the following clause: "And it was also at about the same time mutually agreed between plaintiff and this intervener that he, this intervener, should receive out of any sum so realized by this suit or by said settlement of said cause of action, such moneys as he, this intervener, should disburse, pay out, loan or advance to or on behalf of said plaintiff prior to such recovery or settlement." I ask you if that is correct, Mr. Stiles?

76 A. Yes.

Q. How do you reconcile the statement in the affidavit and the statement in the complaint in intervention?

A. What statement in the affidavit?

Q. That it is to be returned in any event, and in the complaint in intervention you allege it is to be returned out of the moneys received.

A. I still say so.

Q. You think those two are entirely consistent?

A. Why, certainly. I testified that Mr. Holloway promised to return this money out of his portion of the moneys to be received on settlement or recovery; but in any event to return them to me on demand, but not before the adjustment of the case.

Mr. Stringer: We offer in evidence the original complaint in intervention.

Mr. Brooks: I object to that. It is a pleading in the case. I do not think the pleadings ought to go before the jury.

Mr. Schmitt: They ought to, if they are received.

Mr. Brooks: The pleadings are for the court.

The Court: Well, it is simply a statement in the complaint.

Mr. Brooks: Mr. Stiles admits that it contains that statement.

The Court: That is the only purpose of it, concerning that statement. So long as you have it before the jury, that is sufficient, I suppose. That portion of it may go to the jury.

77 Mr. Brooks: I think it is the law that the pleadings should not go before the jury.

The Court: If not introduced in evidence.

Mr. Brooks: If there is any part of it they wish to go before the jury, they can ask the witness if the complaint states so-and-so. Now they want it all before the jury. I do not think that is proper practice to offer the pleadings in the case in evidence.

Mr. Schmitt: The court has limited the offer to that paragraph, as I understand.

The Court: Yes, that portion of it.

Q. I show you Dft.'s Ex. 2, Mr. Stiles, and ask you if that is the letter which you referred to as having been received from Mr. Holloway?

A. It is.

Q. Whose writing is it?

A. I do not know, but I assume it to be the writing of Mr. Lamb.

Dft.'s Ex. 2 offered in evidence as a part of the cross-examination. Received without objection, and read to the jury.

Q. Now, you stated, Mr. Stiles, that Mr. Palmer called on you with respect to the case early in June, and that later, early in August, as I recollect, Mr. Palmer and myself called at your office. Is my statement as to about the time in accordance with your recollection?

A. Yes, it is, except early in August. I think it was along about the 17th or 18th.

Q. Some time during August any way. At the time of
78 that conversation Mr. Palmer told you, did he not, that Holoway had made the claim that you no longer represented him, isn't that correct?

A. I do not recollect that. He may have. I was pretty sure I did not from the tenor of your conversation.

Q. Well, you were told, were you not, that they had been to the claim department in Chicago and wished to settle direct, and that they claimed you had no retainer or authority to represent them in this case, isn't that right?

A. No, I think not. I think I was told that Lockwood & McGreevy had interested themselves in the case.

Q. You were told you had nothing further to do with it?

A. I assumed that from that statement.

Q. And that they wished to settle direct without your intervention?

A. I think that was understood. I understood that.

Q. And Mr. Palmer told you, did he not, that he was willing to pay $6,000, or probably a little more, to anybody who could settle it.

and that he was willing that it be settled through you, if you would do it?

A. He did.

Q. And it was understood that you would take the matter up with Mr. Holloway with the idea of seeing what you could do, is that right?

A. Yes.

Q. You at once, after that conversation, sent Mr. Roe to Cedar Rapids, did you not?

79 A. Pretty promptly thereafter, yes, sir.

Q. And you thereafter received a telegram from him?

A. Mrs. Brockway, sister of Mr. Holloway.

Q. Have you that telegram, Mr. Stiles?

A. My counsel has it.

Q. Will you produce it?

A. This is the telegram (handing same to counsel).

Q. Referring to Dft.'s Ex. 3?

A. Yes.

Dft.'s Ex. 3 offered in evidence; received without objection and read to the jury.

Q. This Dft.'s Ex. 3 is the telegram—is the piece of paper containing the telegram which you received at Minneapolis from the telegraph office?

A. Yes.

Q. Have you in your files, or has your counsel, the original telegram which was signed by Mrs. Brockway?

A. Yes.

Q. Will you produce that?

A. I understand this to be the telegram (handing paper to counsel).

Q. By "this," you mean Dft.'s Ex. 4?

A. Yes.

Q. Showing you Dft.'s Ex. 4, will you state whose writing that is?

A. I do not know.

Q. As a matter of fact, isn't that Mr. A. A. Roe's writing?

A. I don't know.

80 Q. With the exception of the signature?

A. I don't know. I don't believe it is, though. I don't think Mr. Roe can write as good as that. He is too good a lawyer.

Q. Do you wish to state positively that is not Mr. Roe's writing?

A. I am pretty sure it is not. I am sure that Mr. Roe cannot write as well as that. And that represents correspondence that I have received from Mrs. Brockway in her individual hand.

Dft.'s Ex. 4 offered in evidence; received without objection.

Q. Mr. Stiles, do you keep a ledger account of your disbursements in each particular case, or any record in any book of your disbursements in any case?

A. I do.

Q. What form does that take?

A. I have a register containing the title of the case and its file number in which is noted all and singular disbursements made in that case.

Q. Will you produce that book in court this afternoon? When I say the "book," I refer only to the record of the Holloway case.

A. I will do that. I will not produce my register, now in the possession of my counsel, containing private and personal records of all my business. I will produce the page containing the original records in this case, and produce the original checks which are now in court, corroborating those items. This book contains all other records in my office in cases against your company.

81 Q. How many cases do you suppose there are against the Rock Island?

Mr. Edwards: Objected to as immaterial.

A. Half a dozen.

The Court: Sustained.

Mr. Stringer: That is all.

Redirect examination.

Examined by Mr. Edwards:

Q. Were there ever any pleadings drawn or filed in the suit of Holloway against the Receiver prior to the time you discussed the facts with Holloway personally and received authority from him to proceed?

A. No.

Mr. Stringer: Wait a minute. That is objected to as calling for a conclusion.

The Court: Already answered, Mr. Stringer.

Mr. Stringer: I move to strike it out.

The Court: Denied.

Mr. Stringer: Exception.

Mr. Edwards: It is stipulated and agreed by and between the defendant and the intervener, through their respective counsel, that the case of Louis W. Holloway v. Jacob M. Dickinson, as Receiver of the Rock Island, was settled on or about August 28th for the sum of $6,500.

Mr. Stringer: Settled as alleged in our answer; not as alleged in the complaint. In other words, I agree to stipulate with you the amount, that is all.

Mr. Edwards: That is all we ask you to stipulate—that it
82 was settled for the amount of $6,500.

The Court: That the amount of the settlement was $6,500.

(Stipulation as stated by Mr. Edwards read by the reporter.)

Mr. Brooks: And that amount was paid by the Receiver in settlement of it.

Mr. Stringer: As alleged in the answer.

Mr. Brooks: We do not concede that.

The Court: Well, cannot you agree that that is the amount of money that it was settled for, and that that amount was paid to Holloway?

Mr. Stringer: It was not paid to Holloway.

Mr. Brooks: It was paid in settlement to Holloway or his representatives, is that right?

Mr. Stringer: Well, it was paid to his guardian,—$6,500 was paid in settlement of the alleged cause of action of Louis W. Holloway to his guardian.

Mr. Stiles: Well, you admit the amount that was paid, don't you?

Mr. Edwards: That is all we want is the amount, not anything about the manner; but the date, and that $6,500 was paid. You agree to that?

Mr. Stringer: We have admitted that the settlement was as alleged in our answer. Now, counsel wants me to admit the amount of that settlement, and I said we would admit it—the amount of $6,500.

The Court: That is, you settled with the plaintiff in that action?

83 Mr. Stringer: We did not settle with the plaintiff in that action.

Mr. Brooks: Didn't you take a receipt from him, and he sign the dismissal?

Mr. Stringer: Here was my understanding: That we had alleged in our answer that the case was settled with the guardian, and had admitted no amount of settlement. The next inquiry was "Will you admit that it was settled for $6,500"? and I said "Yes."

The Court: That is, that law suit that was pending—this law suit?

Mr. Edwards: Yes; that is what we are fighting about—this cause of action.

Mr. Stringer: We don't admit that.

Mr. Brooks: You filed with this court a dismissal, signed by Holloway, didn't you, after that settlement?

Mr. Stringer: If it is there, you can submit it. (Reading from answer) "This defendant specifically denies that he ever settled the cause of action alleged in the complaint with the plaintiff, although defendant admits that the same was settled with his guardian, and that, because of said settlement with said guardian, plaintiff's cause of action has been adjusted, settled and extinguished." Now, we admit that the amount of that settlement was $6,500 as alleged in the answer.

Mr. Brooks: I do not think we should be confined to that any more than we should confine them to the allegations in the complaint. They settled the action for $6,500.

84 Mr. Stringer: All you asked me to admit was the amount, and I do admit the amount.

Mr. Brooks: Then why do you couple that with some addition? Let it stand that you settled it for $6,500.

Mr. Stringer: As alleged in there—if that is sufficient answer.

Mr. Brooks: That you settled this cause of action of Louis W. Holloway against Dickinson, Receiver, for $6,500.

Mr. Stringer: We have made an admission as to the amount.

The Court: Well, have they an admission that this lawsuit has been settled in that amount?

Mr. Stringer: There is an admission in the answer that because of the settlement with the guardian the "plaintiff's cause of action has been adjusted, settled and extinguished." Now I assumed that that admission was sufficient for counsel's purpose when they asked me only to admit the amount, and I did admit the amount.

The Court: And you do now admit the amount?

Mr. Stringer: Yes, I admit the $6,500 was paid as alleged in our answer.

Mr. Edwards: We do not ask for any such admission. Had we not relied upon the admission that this suit was settled for $6,500 we certainly would be prepared to prove that this action was settled for $6,500.

The Court: If the answer is a sufficient admission in the other respects, outside of the amount, why, then, it ought to be satisfactory, because he now admits the amount of it.

85 Mr. Brooks: He wants to preclude us by his qualification.

The Court: Well, it is admitted here that plaintiff's cause of action has been adjusted, settled and extinguished——

Mr. Stringer: Yes.

The Court: —by the settlement which the company made, as set forth here under the approval of the Illinois court, for $6,500?

Mr. Stringer: Yes.

Mr. Brooks: We do not stipulate that that is a fact. I do not see why there should be any point about that at all. I do not see that it cuts any figure whatever. But, evidently, counsel wants to get in, in a roundabout way, the proof of this guardianship.

Mr. Schmitt: It won't be considered as proof.

The Court: Then a stipulation as to this may be entered into without any admission of the intervener as to guardianship.

Mr. Brooks: That it was paid, in fact, in satisfaction of the cause of action.

Mr. Stringer: I told you I will admit the amount, and that is all I told you. I certainly will not admit a state of facts that does not exist and which is directly contrary to what is set up in our answer.

The Court: Will this stipulation be satisfactory: It is stipulated and agreed that plaintiff's cause of action has been adjusted, settled and extinguished by the settlement which the company made, as set forth here, under the approval of the Illinois court, for

86 $6,500, it being understood that the intervener in no manner, or to any extent, admits or stipulates the appointment of a guardian?

Counsel on both sides assent.

An adjournment is then taken for noon recess.

Afternoon Session, Monday, January 15, 1917.

GEORGE C. STILES, recalled for further re-direct examination.

By Mr. Brooks:

Q. Mr. Stiles, as requested by counsel for the Receiver, you have produced here your account book showing all of the items disbursed on account of Mr. Holloway, as you have indicated by your previous testimony?

A. I have; but the record differs slightly from the figures given by me.

Q. Well, they need some explanation to connect up—certain items—is that it?

A. There is a trifling difference of, I should say, $8. In truth and fact, the disbursements as shown by the records amount to about $8 more than I have indicated by my testimony.

Q. In what particular item does that difference appear?

A. The item of Mr. Roe's expense, instead of being $16 was $20, and the hospital bill, instead of being $42 was $46 and something. Those, I think, are the only corrections.

Q. Counsel here have inspected those books?

A. They have, in my presence.

Mr. Brooks: The intervener rests.

87 "The defendant offered certain testimony and exhibits addressed solely to the issue of the mental competency of the plaintiff and the issue whether the contract of employment referred to in the complaint in intervention was champertous. Intervener offered testimony and exhibits in rebuttal addressed to the same issues. Said testimony not being material upon writ of error is, by stipulation of the parties, not returned in full, but in the event the Supreme Court should deem it necessary to have the same returned, the parties suggest that the Clerk of the Supreme Court of Minnesota be ordered to transmit the same at the expense of defendant."

88 Mr. Stringer: The defendant now moves the court to instruct the jury to render a verdict in favor of the defendant and against the intervener on the ground that it conclusively appears that this contract of employment of the intervener was obtained by solicitation, and that the contract and the employment of the intervener was unlawful and the result of champerty and barratry; and on the further ground that the plaintiff's cause of action, being a cause of action arising under the so-called federal employers' liability act, the statute of the State of Minnesota, insofar as it purports or attempts to give an attorney a lien
89 thereon, is ineffectual in that the cause of action of the plaintiff arises under the act of congress; that the Congress of the United States has taken full jurisdiction of the relation of master and servant while both master and servant are engaged in

inter-state commerce, and that so far as the Minnesota statutes purport or attempt to give a lien upon such a cause of action arising out of inter-state commerce, it is an unlawful interference by the State of Minnesota and by the legislature thereof with a subject entrusted exclusively to congress.

Motion denied.

Exception by defendant.

The intervener at this time moves the court to direct the jury to return a verdict in favor of the intervener and against the defendant for the sum of $2,166.66, with interest on the same from August 29, 1916.

Motion denied.

Exception by intervener.

Mr. Schmitt then summed up the case to the court and jury in behalf of the defendant, and was followed by Mr. Edwards in behalf of the intervener.

The Court thereupon instructed the jury as follows:

Charge.

GENTLEMEN OF THE JURY: In giving you the law of this case, as it now becomes my duty to do; I shall probably be more brief than you suspect, not because of any want of such importance
90 in the case as counsel for both sides have emphasized, but because there is a single, plain, distinct issue here, as the court views the case, which requires but little elaboration so far as the application of any principles of law are concerned.

There are three parties to this case, as you already understand: The plaintiff, Louis W. Holloway, who is not longer interested or invoived, having long since settled his cause of action with the defendant; then there is the defendant, the receiver of the Chicago, Rock Island & Pacific Railway Company, who is a party to this action, and to whom the court will hereafter refer, for the sake of brevity, simply as the defendant or the defendant railway company, and the third party to the action is the intervener, Mr. George C. Stiles, an attorney of this court.

To go at once to the root of the matter, and to the one main issue, to which I have referred, gentlemen,—it may be stated to be the issue,—as to whether the contract upon which Mr. Stiles bases his right to recover here is void, either as champertous in character or by reason of the mental incapacity of Hoiloway to make a valid contract.

Your determination of that issue depends upon whether the contract was secured by Stiles through the solicitation of Mr. Roe, in the first place, and, then, as to whether Holloway was of unsound mind at the time he entered into the contract on March 8, 1916. If Mr. Stiles' contract with Holloway is good and valid, then that settlement made, to which the court has referred, by
91 Holloway with the company, and without Stiles' consent but even against his protest, does not in the least affect his rights, and he would be entitled to recover of the defendant here

by your verdict the full-one-third of the amount of that settlement, which would be $2,166.66, with interest at the legal rate from August 29, 1916, the date at which that settlement was finally consummated and the money paid over.

There might be in addition to that a small item of legitimate expenses and disbursements made by Mr. Stiles, which, however, would not include any advances for loans, and is of such slight monetary consequence that it has been withdrawn by consent of counsel from consideration in this case.

So, gentlemen, in your consideration of this case you will turn your attention at once to the question of the validity of Mr. Stiles' contract for compensation. The defendant company assails the contract on two grounds, already indicated: First, champerty, and, second, the incompetency of Holloway to make it.

As to the issue of champerty, the court instructs you that the law does not look with favor upon contracts which tend to foment strife and litigation in the courts. If this contract with Holloway for the services of Mr. Stiles was secured through the solicitation of Mr. Roe, then there can be no recovery, for the reason that any such service by Roe, under his contract with Stiles, whereby he was to receive not only a salary but a percentage of any amount recovered,
92 would vitiate any contract of employment thereby obtained for Stiles. It would vitiate it because of its champertous character, and no right of recovery by reason of it, or based upon it, would be recognized by this court upon any theory, either of recovery for an express, stipulated amount, or upon the basis of quantum meruit,—which, by the way, so far as any reasonable value of the services of Mr. Stiles is concerned, is another matter which has been withdrawn from your consideration in this case.

The defendant company claims that Roe did solicit this contract. Mr. Stiles asserts the contrary, and maintains the fact to be, and that the evidence demonstrates it, that the case came to him without any solicitation upon his part or any representative of his. Mr. Stiles claims that Mr. Roe's connection with the case was purely that of an agent and investigator, sent out by Mr. Stiles after the case had come to him legitimately and naturally in the ordinary course of a man's business and reputation as an efficient lawyer and practitioner at the bar. And surely, if by proper conduct and hard work a man has built up a reputation which, going abroad, brings business to him from those who have reason to regard him favorably, he certainly would have a right to accept any business which came to him by reason of such recommendations. It is the ambition of most men in any profession to build up a fair fame, which will sometimes bring business from sources that he least expects.

93 It is of no consequence to this case whether or not Mr. Roe solicited litigation for Stiles in other cases. There is no evidence that he did, and no evidence that he was employed to solicit other cases. The contract does not so indicate upon its face, and although the court opened the door for the purpose of having the authority of Roe, in his operations with Mr. Stiles, enlarged upon, if

the actual practice and the operations of the two under that contract could show it, it was not shown. Each case must stand upon its own bottom and upon its own facts as to whether champerty exists or not, and the question is here whether the proof is sufficient to establish that Roe solicited this particular case. If he did not, then Mr. Stiles had a perfect right to make the contract with Holloway, and upon a contingent fee basis, as well as a perfect right to make such advances as may have been necessary to defray the expenses of the suit, and, perchance, keep the plaintiff alive during its pendency. If the law were otherwise, and an attorney could not help a cripple, who was without means, simply because he had charge of his case, it might result, in many instances, of a helpless victim of wrong being forced into some unfair and inadequate settlement with the very person or persons who were responsible for his misfortunes.

Now, I will not review the testimony. You have it before you, as adduced on both sides, as to how this particular case came to the attention of Mr. Stiles, and as to what Roe's conduct was in connection with it, and may draw your own conclusions for yourselves
94 from the evidence that has been submitted as to whether it was secured by the solicitation of Roe or otherwise.

The burden of proof is on the railway company to establish the affirmative of this proposition, since it is the defendant company who prefers the charge. And by the burden of proof is meant that its side of the issue must be decided by the fair preponderance of the testimony; that is to say by the greater weight of the evidence. If upon that issue the evidence were evenly balanced it would be your duty to find in favor of the intervener.

And in determining where the balance of the scales lies or is, you must place in those scales the testimony as you have heard it, giving to that testimony the weight and credit to which you deem it legitimately entitled in the case of each and every witness that has come upon the stand, applying to all the witnesses the tests which are usually applied in law suits to determine their reliability. You have a right to consider the appearance of a witness upon the stand and his demeanor before you, his intelligence or lack of it, his candor or want of candor as the case may be, whether his recollection is good or bad, or whether it is too good or too bad. It is for you to say with what motive a witness goes upon the stand, whether he has any interest in the result of the action, and, if so, whether that interest has to any extent affected or tended to give color to his testimony. It is for you to say whether a given statement by any witness is
95 reasonable or unreasonable, probable or improbable, likely or unlikely to be true. If you should find that any witness had wilfully testified falsely in regard to any material fact you would be at liberty to disregard all the rest of the testimony of any such witness except in so far as you found it corroborated by other testimony in the case of a reliable character or other facts and circumstances proven in the case.

Now, these rules as to burden of proof and credibility are general in character, and apply not only to this question of the issue of

champerty, but *as* to the second question as to the claim of mental incapacity of Holloway to make the contract with Mr. Stiles, even if the contract were free from champerty and otherwise valid.

In the absence of evidence to the contrary the presumption is against insanity or unsoundness of mind just the same as the presumption is against champerty or any other unlawful conduct in the absence of proof tending to establish it.

The question for you to determine on this second branch of the case is whether at the time Holloway entered into the contract for Mr. Stiles' services he was, through the use of opiates and because of his condition generally, so far bereft of his senses as not to be able to know and appreciate the nature of his acts. No mere weakness of character or state of physical disability or suffering, which did not deprive him of his capacity to know and understand the nature and character of the business in hand, would be sufficient to support a finding that Holloway was so unsound of mind as to in-
96 capacitate him from making a contract of employment with the intervener, Mr. Stiles. No fraud or undue influence is alleged here, so that this issue turns upon the simple question of plaintiff's actual soundness or unsoundness of mind at the time the contract was entered into.

Now, you have before you the evidence on this question. Recall it for yourselves. It is not the duty of the court to review the testimony. If it undertook to do so it might unwittingly emphasize one portion to the neglect of another, and, therefore, the court will avoid calling to your attention any of the various claims which counsel make as to the testimony in this case. Take your law from the court and not from counsel. Depend upon your own recollections for what the evidence is and not upon the memory of any one else. It is not for the court to tell you what the facts are, nor to intimate to you what conclusions you should draw.

Some opinion evidence has been received here, but it is not binding upon you. It is only permitted to aid you in arriving at proper conclusions of fact concerning those matters, depending upon observation of others. But the opinion of any witness upon the subject of sanity or insanity is of no value beyond the extent to which you, the jury, deem the opinion justified from the evidence detailed by the witness upon which he bases his opinion.

Consider all the evidence fairly and impartially in this case no matter from which side it has come, and let your verdict be
97 in accordance with the law as given by the court and the facts as shown by the evidence submitted and upon nothing outside.

Should you find the Stiles-Holloway contract void, and by the greater weight of the testimony, you will return a verdict for the defendant. If you fail so to find, return a verdict for the intervener, Mr. Stiles, in the full sum of $2,166.66, with interest from the date which I have mentioned, at the rate of 6 per cent.

As indicated during the trial, I think by counsel at least, the court will, in addition to your general verdict, ask you to answer directly in the negative or affirmative two questions pointed to the two main

issues which I have pointed out. Those two questions are embodied in a form which will be given to you, with two other forms which you may use for your convenience when you have arrived at a verdict. The question should be answered simply Yes or No. The first one is: Was Holloway mentally competent to make the contract? And the second one is: Was contract void for champerty?

Mr. Brooks: I will make this request: Counsel for the intervener, having read the two questions which the court is about to submit to the jury, requests that in addition to those questions a third and additional question be submitted in these words: If the jury find Holloway was not mentally competent to make the contract on March 8, 1916, did he subsequently, by his words and conduct, ratify and affirm that contract?

Request denied, and exception taken by intervener.

98 The Court: Gentlemen, the law contemplates in the ordinary course of a diligent consideration of a case submitted to the jury a unanimous verdict as soon as the same can be legitimately arrived at. But if, after 12 hours of continuous deliberation, the jury is unable to unanimously agree, a number, not less than 10, may return a verdict, in which case each man of the 10 or 11, as the case may be, signs the verdict personally. If you all agree only your foreman need sign the verdict. Having done so you will return to court.

The jury then retired, returning into court with the following verdict:

(Title.)

"We, the jury in the above entitled action, find for the intervener and assess his damages in the sum of Twenty-one hundred and sixty-six dollars 67/100, with interest 6% from Aug. 29, 1916, $2,217.00 *Dollars.*

Dated this 19th day of January, A. D. 1917.

DWIGHT BANGS, *Foreman.*"

(Title.)

"In addition to the general verdict the jury answer the special questions submitted by the Court as follows:

1. Was Holloway mentally competent to make the contract? Answer Yes or No.

A. Yes.

DWIGHT BANGS, *Foreman.*

2. Was contract void for champerty? Answer Yes or No.

No.

DWIGHT BANGS, *Foreman.*

Dated this 19th day of January, A. D. 1917."

99 INTERVENOR'S EX. E.

Copy.

George C. Stiles,

Attorney at Law,

1054 McKnight Building, Minneapolis, Minnesota.

I hereby retain and employ George C. Stiles, as attorney at law, to bring suit and represent me in the prosecution and recovery of my claim against the C. R. I. & P. Railway Company, for damages arising from personal injuries received by me through the negligence of that Company, on the 3rd day of March, 1916, and agree to pay him a sum equal to one-third of the amount finally recovered from said Railway Company by me, either by suit or by settlement, but no settlement of said claim shall be made without first securing my consent thereto.

LOUIS W. HOLLOWAY, *Claimant.*

I hereby accept the above claim and cause of action and agree to prosecute the same to settlement or judgment, on the terms above set forth.

GEO. C. STILES.

100 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff.

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant, and George C. Stiles, Intervener.

It is stipulated by and between the parties, that the foregoing transcript, consisting of 347 typewriten pages, is true and correct and it contains and embraces all testimony, offers, exhibits, exceptions and objections and all other proceedings had and taken upon the trial of this action, and said transcript of the testimony may be without notice signed, settled and allowed by the Court as and for the settled case herein and as containing all testimany, offers, exhibits and exceptions and all other proceedings had and taken upon the trial of this action.

(Signed) BROOKS & JAMISON &
D. C. EDWARDS,
Attorneys for Intervener.

(Signed) STRINGER & SEYMOUR,
Attorneys for Defendant.

Dated February 15, 1917.

Endorsed: Filed Mar. 1, 1917. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

101 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant, and George C. Stiles, Intervener.

Order Settling Case.

Pursuant to the foregoing stipulation, and having examined the foregoing transcript of the record, and finding the same in all respects correct, I, Horace D. Dickinson, Judge of the above named Court, who tried the above entitled action, do hereby sign, settle and allow said transcript containing 347 typewritten pages, as and for the settled case herein and as containing all testimony, offers, objections, exceptions and exhibits and all other proceedings had and taken upon the trial of the above entitled action.

Dated February 24th, 1917.

(Signed) HORACE D. DICKINSON,
District Judge.

Endorsed: Filed Mar. 1, 1917. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

102 (Title of Cause.)

Notice of Defendant's Alternative Motion for Judgment or a New Trial.

To Brooks & Jamison, Attorneys for Intervener, and to said Intervener.

SIRS: You will please take notice that at a special term of the above named Court to be held in the Court House in Minneapolis, Hennepin County, Minnesota, on Saturday, the 24th day of February, 1917, at 10 o'clock A. M., or as soon thereafter as counsel can be heard, the defendant will move the court for an order directing that judgment be entered herein in favor of the defendant and against the intervener, notwithstanding the verdict of the jury herein, on the following grounds:

1. Because the contract of employment and retainer between the plaintiff and the intervener was as a matter of law, null and void, because champertous and unlawful in character and induced and pro-

cured by the solicitation of a layman for the intervener, with whom intervener had an agreement that said layman would solicit and procure personal injury cases for the intervener in consideration of a share of the profits of the litigation or settlement.

2. Because plaintiff's cause of action arose under the so-called Federal Employers' Liability Act of April 4th, 1908, and that the statute of the State of Minnesota known as Section 4955 of the
103 General Statutes of Minnesota for the year 1913 insofar as the same purports to impose a lien upon such a cause of action so arising under the act of Congress is inoperative and ineffectual and said statute as construed by the Court is an unlawful attempt to regulate and impose an additional burden on interstate commerce, exclusive jurisdiction of which is vested by the Constitution of the United States of America in the Congress of said United States.

In the event said Court should not grant, but should deny, the defendant's said motion for judgment notwithstanding the verdict, the defendant will move the Court for an order vacating and setting aside the verdict of the jury herein and for a new trial of said action on the following grounds:

1. Because said verdict is not justified by the evidence.
2. Because said verdict is contrary to law.
3. Because of errors at law occurring at the trial and duly excepted to by the defendant at the time.
4. Because of the following errors of law occurring at the trial and specifically assigned as follows:

(*a*) The Court erred in refusing to direct a verdict in favor of the defendant and against intervener.

(*b*) The Court erred in maintaining intervener's objections to the following question:

"Mr. Stiles, you told us yesterday, among other things, your specialty was personal injury cases. Will you tell us about
104 how many personal injury cases you had in the office during the year, the last half of the year 1915 and during the year 1916?

Objected to as immaterial.

Objection sustained."

(*c*) The Court erred in sustaining intervener's objection to the following offer made by the defendant:

"Mr. Stringer: We offer to prove that the intervener in the conduct of his business of the specialty of personal injury cases had during the last half of the year 1915 and during the year 1916, a large number of personal injury cases, the exact number of which I am unable to state, but I offer to prove approximately two hundred. This offer is made as having a tendency to prove the allegations of the answer to the complaint in intervention in that it would tend to prove that it would be impossible to have that number of cases without solicitation. It is offered for that purpose and we propose to follow it up by showing that the majority, probably two-thirds of these cases, arose outside the state of Minnesota and were solicited by men in the employ of Stiles and that these men were not lawyers but laymen. * * *

The Court: Objection sustained."

(*d*) The Court erred in sustaining intervener's objection to the following question:

"Q. And in the majority of the cases he does sign these contracts direct with the majority of the men without conferring with you, does he not?

105 Mr. Brooks: I object to it as immaterial.

* * * * * * *

The Court: We have to draw the line somewhere. I will sustain the objection. It would lead us into collateral issues that are not in the case."

(*e*) The Court erred in sustaining the intervener's objection to the following offer:

"Mr. Schmitt: The defendant offers to prove that during the year 1915 and also during the year 1916, prior to and up to March 8, 1916, the intervener Stiles was engaged in the general business or scheme of employing men not attorneys at law to travel in the various states surrounding Minnesota, including Illinois, to solicit personal injury cases for said Stiles and that pursuant to this scheme one A. A. Roe was employed and paid a salary by Stiles, including his expenses, and also a commission upon cases so solicited by him outside of the state of Minnesota, and further, that pursuant to this scheme said Roe solicited a large number of cases and secured the bringing of a large number of personal injury cases from states other than Minnesota into the Minnesota Courts by said Stiles and among the cases so secured and brought into the state of Minnesota was the case at bar, that of Holloway v. Dickinson as Receiver of the Rock Island road, and that but for said solicitation by said Roe would never have been brought in the courts of the state of Minnesota.

Mr. Brooks: The intervener objects to the offer as being an

106 effort to prove facts that are wholly irrelevant, immaterial and not within the issues of this case.

The Court: Sustain the objection."

(*f*) The Court erred in sustaining the intervener's objection to the following offer made by the defendant:

"Mr. Stringer: We offer to prove that the actual duties performed by Roe under the contract between him and Stiles consisted largely of the solicitation of personal injury cases for Stiles to be handled by Stiles and that acting pursuant to said contract Roe has solicited and obtained in Stiles' name and for Stiles a large number of personal injury cases in which Stiles would not otherwise have been retained, among which was the case of Louis W. Holloway v. Receiver of the Rock Island.

Mr. Brooks: So far as the offer proposes to prove the securing and the making of contracts by Stiles with other than the plaintiff in this case, the offer is objected to on the ground of its immateriality and irrelevancy and because the offer is not within the issues made by the pleadings in this case.

The Court: Objection sustained."

(*g*) The Court erred in charging the jury as follows:

"The contract does not indicate upon its face, and although the Court opened the door for the purpose of having the authority of Roe in his operations with Stiles enlarged upon, if the actual practice and operations of the two under that contract could show it, it was not shown."

107 Said motion is made upon all the records, files and proceedings in this action and upon a case then and there to be settled by the Court.

Respectfully, STRINGER & SEYMOUR,
Attorneys for Defendant.

800-805 Germania Life Building, Saint Paul, Minnesota.

(Ttitle of Cause.)

Order Denying New Trial.

The above entitled cause came on for hearing before the undersigned, one of the judges of said court, on the 24th day of February, 1917, on defendant's motion, made in the alternative, for judgment notwithstanding the verdict or for a new trial. The motion was based upon the settled case and upon the grounds stated in the moving papers on file.

Messrs. Stringer & Seymour appeared in support of the motion on behalf of the defendant, and Messrs. Brooks & Jamison and Mr. D. C. Edwards appeared for intervener in opposition.

Having heard the arguments of counsel and being fully advised in the premises,

It is Ordered That the said motion be and the same is hereby in all respects denied.

By the Court: HORACE D. DICKINSON, *Judge.*

Dated this 28th day of February, 1917.

(Endorsed:) Filed Mar. 1, 1917. P. S. Neilson, Clerk. by L. E. Petri, Deputy.

108 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant, and George C. Stiles, Intervener.

To Messrs. Brooks & Jamison and D. C. Edwards, Attorneys for Intervener, and to said Intervener.

SIRS: You will please take notice that the above named defendant appeals to the Supreme Court of the State of Minnesota from the

order of the above named Court dated February 28th, 1917, and filed in the office of the above named Court on March 1st, 1917, wherein and whereby said Court did in all things deny the defendant's motion for judgment in its favor notwithstanding the verdict of the jury or for a new trial. Said appeal is taken from said order and each and every part thereof.

STRINGER & SEYMOUR,
Attorneys for Defendant.

800-805 Germania Life Building, St. Paul, Minnesota.

Endorsed: Due and personal service admitted March 10, 1917. Brooks & Jamison & D. C. Edwards. P. S. Neilson, Clerk of District Court, by L. E. Petri, Deputy. Filed Mar. 13, 1917. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

109 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant, and George C. Stiles, Intervener.

Know all men by these presents, that McNeil V. Seymour and Edward S. Stringer, of St. Paul, Ramsey County, Minnesota, are held and firmly bound unto George C. Stiles, Intervener in the above entitled action, in the sum of Two Hundred Fifty ($250.00) Dollars lawful money of the United States, for which payment well and truly to be made, we *bond* ourselves and each of our heirs, executors, administrators and assigns firmly by these presents.

The condition of this obiigation is such that whereas the above named defendant is about to appeal to the Supreme Court of the State of Minnesota from the order of the above named Court denying its alternative motion for judgment or a new trial.

Now therefore, if defendant shall pay all the costs and charges which may be awarded against him on this appeal, not exceeding the penalty of this undertaking, this obligation shall be void, otherwise in full force.

In testimony whereof, we have hereunto set our hands and seals this 9th day of March, 1917.

McNEIL V. SEYMOUR. [SEAL.]
EDWARD S. STRINGER. [SEAL.]

Signed, sealed and delivered in presence of
M. McGINN.
S. K. BAKER.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 9th day of March, 1917, before me, a notary public within and for said county, personally appeared McNeil V. Seymour and Edward S. Stringer, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

110 [SEAL.] S. K. BAKER.
Notary Public, Ramsey County, Minn.

My commission expires July 6, 1921.

STATE OF MINNESOTA,
County of Ramsey, ss:

McNeil V. Seymour and Edward S. Stringer, being duly sworn, depose and say each for himself, that each if a resident and freeholder of the County of Ramsey and State of Minnesota and each of them is worth in excess of Five Hundred ($500.00) Dollars over and above all debts and liabiilities and exclusive of property exempt from execution.

McNEIL V. SEYMOUR.
EDWARD S. STRINGER.

Subscribed and sworn to before me this 9th day of March, 1917.
[SEAL.] S. K. BAKER,
Notary Public, Ramsey County, Minn.

My commission expires July 6, 1921.

The within undertaking and sureties are hereby approved.
HORACE D. DICKINSON,
District Judge.

(Endorsed:) Filed Mar. 13, 1917. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

Endorsed: Service admitted 3/10/17. Brooks & Jamison & D. C. Edwards.

STATE OF MINNESOTA,
County of Hennepin, ss:

District Court, Fourth Judicial District.

I, P. S. Neilson, Clerk of the above named Court, do hereby certify and return to the Supreme Court of the State of Minnesota, that I have compared *to* papers writing to which this certificate is attached with the original Notice of Appeal to Supreme Court, and Undertaking on Appeal, in the action therein entitled, as the same

appear of record and on file in the said Clerk's office, at the Court House in said Hennepin County, Minnesota, and find the same to be true and correct copies thereof, and of the whole thereof.

111 In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County, this 14th day of March A. D. 1917.

P. S. NEILSON,
Clerk of District Court,
By C. U. WILLIAMSON, *Deputy.*

(Endorsed:) Filed Mar. 16, 1917. I. A. Caswell, Clerk.

112 LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant-Appellant, and George C. Stiles, Intervener-Respondent.

Assignments of Error.

1. The Court erred in denying defendant's motion for judgment notwithstanding the verdict against him on the ground that the statute of the state of Minnesota creating an attorney's lien upon the cause of action was inoperative and void so far as might concern a cause of action arising under the Federal Employers' Liability Act, and invalid because repugnant to the constitution and laws of the United States. (Fol. 1260-1261.)

2. The Court erred in denying defendant's motion for judgment notwithstanding the verdict against him on the ground that intervener's contract of employment was champertous and void because solicited by a layman employed for that purpose. (Fol. 1259-1260.)

3. The Court erred in denying defendant's motion for a new trial made upon the ground that the evidence did not justify the verdict and was contrary to law. (Fol. 1262.)

4. The Court erred in denying defendant's motion for a new trial because of its error in sustaining intervener's objection to the following offer:

"Mr. Stringer: We offer to prove that the intervener in the conduct of his business of the specialty of personal injury cases, had during the last half of the year 1915 and during the year 1916, a large amount of personal injury cases, the exact number of which I am unable to state, but I offer to prove approximately 200. This offer is made as having the tendency to prove the allegations of the answer to the complaint in intervention, in that it would tend to prove that it would be impossible to have that number of cases without solicitation. It is offered for that purpose and we propose to follow it up by showing that the majority, probably two-thirds of these cases, arose outside the State of Minnesota and were solicited

by men in the employ of Stiles and that these man were not lawyers but laymen.

Mr. Brooks: We object to it as incompetent, irrelevant, and immaterial because as the Supreme Court has always said that the solicitation question can only be important as bearing upon the case before the court, and further, that it is not within the issues raised by the pleadings.

113 The Court: Objection sustained." (Fol. 694-696.)

5. The Court erred in denying defendant's motion for a new trial because of its error in sustaining intervener's objection to the following offer:

"Mr. Schmitt: The defendant offers to prove that during the year 1915 and also during the year 1916 prior to and up to March 8th, 1916, the intervener Stiles was engaged in the general business or scheme of employing men, not attorneys at law, to travel in the various states surrounding Minnesota, including Illinois, to solicit personal injury cases for said Stiles and that pursuant to this scheme, one A. A. Roe was employed and paid a salary by Stiles, including his expenses, and also a commission upon cases so solicited by him outside of the State of Minnesota, and further, that pursuant to this scheme said Roe solicited a large number of cases and secured the bringing of a large number of personal injury cases from states other than Minnesota, into the Minnesota courts by said Stiles, and among the cases so secured and brought into the State of Minnesota, was the case at bar, that of Holloway v. Dickinson, as Receiver of the Rock Island road, and that but for such solicitation by said Roe, the case at bar would never have been brought in the courts of the State of Minnesota.

Mr. Brooks: The intervener objects to the offer as being an offer to prove facts that are irrelevant and immaterial and not within the issues of this case.

The Court: Sustain the objection." (Fol. 714-716.)

6. The Court erred in denying defendant's motion for a new trial because of its error in sustaining intervener's objection to the following offer:

"Mr. Stringer: We offer to prove that the actual duties performed by Roe under the contract between him and Stiles consisted largely in the solicitation of personal injury cases for Stiles and to be handled by Stiles and that acting pursuant to said contract Roe has solicited and obtained in Stiles' name and for Stiles a large number of personal injury cases in which Stiles would not otherwise have been retained, among which was the case of Louis W. Holloway v. The Receiver of the Rock Island.

Mr. Brooks: So far as the offer proposes to prove the securing or making of contracts by Mr. Stiles with other than plaintiff in this case, the offer is objected to on the ground of its immateriality and irrelevancy and because that offer is not within the issues made by the pleadings of this case.

The Court: Objection sustained." (Fol. 719-720.)

7. The Court erred in denying defendant's motion for a new

trial made because of its error in sustaining intervener's objection to the following question:

"Q. In a majority of the cases he does sign these contracts direct with the majority of men without conferring with you, does he not?

Mr. Brooks: I object to that as immaterial. * * *

The Court: We have to draw the line somewhere and I will sustain the objection. It will lead us into collateral issues that are not in this case." (Fol. 710-713.)

8. The Court erred in denying defendant's motion for a new trial because of the following error in the charge:

"The contract does not so indicate upon its face, and although the Court opened the door for the purpose of having the authority of Roe in his operations with Stiles enlarged upon, if the actual practice and the operations of the two under the contract could show it, it was not shown." (Fol. 1156.)

114 9. The Court erred in denying defendant's motion to direct a verdict in favor of defendant. (Fol. 1143-1146.)

10. The Court erred in denying defendant's motion to vacate and set aside the verdict of the jury and for a new trial. (Fol. 1274-1276.)

STRINGER & SEYMOUR,
Attorneys for Appellant,
Saint Paul, Minnesota.

(Endorsed:) Due and personal service admitted May 17th, 1917. Geo. C. Stiles and W. C. Edwards, Brooks & Jamison, Attorneys for Intervener & Respondent. Filed May 18, 1917. I. A. Caswell, Clerk.

115 Hennepin County.

220-20415.

Hallam, J.

Holt, dissenting. 7/11/17.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the C. R. I. & P. Ry. Co., Appellant; GEORGE C. STILES, Intervener-Respondent.

Syllabus.

An attorney has a lien upon a cause of action arising under the Federal Employers' Liability Act when an action thereon is instituted in the courts of this state, and in such action the lien may be enforced.

The intervener's contract with plaintiff cannot be held champertous as a matter of law.

No error occurred in the trial of sufficient materiality to entitle defendant to a new trial.

Affirmed.

Opinion.

This appeal concerns the enforcement of the attorney's lien after the parties to the action settled the same without compensating the attorney for the services he rendered plaintiff. On the application of the attorney, the court vacated the dismissal of the action and permitted him to intervene for the purpose of having his right to a lien and the amount thereof determined. The issues were submitted to a jury. A general verdict was rendered in favor of the intervener, and by special verdict it was found that plaintiff was mentally competent to make the contract under which intervener asserted his lien, and that such contract was not void for champerty. Defendant appeals.

Appellant claims that he is entitled to judgment notwithstanding the verdict for two reasons: 1. The cause of action being one arising under the Federal Employers' Liability Act the attorney's lien given by the state law does not attach thereto.

116 2. The contract under which the lien is asserted is champertous as a matter of law. It is contended that in the act referred to Congress legislated upon every phase of the subject of the payment of damages to employees injured while engaged in interstate commerce, citing Mondou v. N. Y. N. H. & H. Ry. Co. 223 U. S. 1; Michigan Central Ry. Co. v. Vreeland, 227 U. S. 59; Seaboard Air Line v. Horton, 233 U. S. 492; Staley v. Illinois Cent. Ry. Co. 268 Ill. 356; and that this legislation includes the amount of recovery and distribution thereof under such decisions as Gulf, Col. & S. F. Ry. Co. v. McGinnis, 228 U. S. 173; and N. Car. Ry. Co. v. Zachary, 232 U. S. 248; Taylor v. Taylor, 232 U. S. 363. Hence, it is said, that state statutes cannot impress an attorney's lien on the cause of action, or enforce payment of any sum of money except the sum contemplated by the act and that only to the beneficiaries thereof. To do more is said to penalize the railroad company and to burden interstate commerce. The argument of counsel is ingenious but not convincing. Congress has not attempted to regulate the dealings between the railroad employee, injured in interstate commerce, and his attorney. No doubt, that body from the first inception of this sort of legislation realized full well that the railroads, as a rule, would not voluntarily pay adequate compensation to the injured employee or his beneficiaries; but that usually such compensation could be obtained only at the end of a bitterly contested lawsuit requiring an attorney's services, or through a series of negotiations carried on by an attorney. It could not have been contemplated that this work of an attorney should be a gratuity. Neither is it supposable that the members of Congress are unaware of the regrettable fact that among attorneys there has long existed keen competition for this sort of litigation and frequent overreaching in bargaining for an uncon-

scionable fee. Notwithstanding all this, we find no provision in the act in any manner bearing upon the relation or compensation of an attorney who is employed to enforce the liability thereby
117 created. The fee going to the attorney cannot be considered a burden upon the carrier or, indirectly, upon interstate commerce. It comes out of the sum which by the settlement or the judgment in the action is awarded the client. The person entitled to compensation under the Federal Employers' Liability Act has the right to enforce his cause of action in the state courts, and when he so elects we see no reason why, in the absence of federal legislation indicating to the contrary, the attorney may not call upon the court to protect his rights under the lien given by the state statute upon the cause of action. In the instant case defendant had full notice of the attorney's rights before the payment of the money on the settlement made with the client. Before such settlement was made defendant's representative interviewed intervener and announced that no effort would be made to protect against the lien—defendant taking the ground that intervener had no lawful lien which he could assert.

The jury found the contract between plaintiff and intervener not champertous. We are asked to hold as a matter of law that it was. The contract on its face does not indicate champerty. And we do not think the evidence conclusively shows that it was solicited so as to bring it within the condemnation of such cases as Gammons v. Johnson, 76 Minn. 76; Gammons v. Gulbranson, 78 Minn. 21; Holland v. Sheehan, 108 Minn. 362; or even Ellis v. Frawley, 161 N. W. 364. There was evidence that the invitation to accept the employment came through a party who had no connection with the attorney or with Mr. Roe, the attorney's agent or servant. One Lamb who had known Roe for a long time, and had been a railroad employee for years, was health officer at Moline, Illinois, and as such frequented the hospital there. After plaintiff's injury, wherein he lost his right arm, he was taken to this hospital, where Lamb met and talked with him. According to Lamb's testimony, plaintiff stated he desired some one to handle his case. Lamb told him he knew Roe
118 who worked for intervener and that intervener was a good attorney for personal injury cases. Thereupon, after consultation with plaintiff's sister, Lamb wrote a letter to Roe at Minneapolis concerning the injury to plaintiff and stating: "He (plaintiff) asked me if I would write you and come down and interview him and make arrangements to handle his case. I told him I would write to you as soon as I returned home which I have done." This letter was exhibited to intervener and he directed Roe to go to Moline, see plaintiff, and investigate the case. Roe so did, and made a contract with plaintiff in behalf of intervener, and subject to his approval, to handle the case upon a contingent fee of 1/3 of the amount that might be obtained by settlement or suit. When plaintiff was able to travel, he came to Minneapolis with Lamb; and there intervener, after a conference with plaintiff, ratified the contract made by Roe and commenced this action against defendant. There is nothing in the record which would justify us in holding Lamb's testimony of no probative force. It is plain that, if the jury accepted his version

of how intervener's employment came about, there is nothing akin to champerty in the contract, for then neither Roe nor intervener solicited or incited litigation over plaintiff's cause of action. Defendant was not entitled to judgment notwithstanding the verdict.

Defendant proposed to prove that intervener had had so large a number of personal injury cases, during the year and a half preceding his employment in this case, that the inference would be that active solicitation was used in procuring them, and that he employed persons, not attorneys, to travel and solicit such cases for him in other states, and that Roe had been so engaged. Objection to the proffered testimony was sustained and error is assigned on the ruling. Intervener admitted that he had built up an extensive practice growing out of claims against railroads for personal in-
119 juries and damage and loss to shipments of goods, and admitted the employment of various assistants among whom was Roe. Roe's contract of employment was in writing, was received in evidence, and spoke for itself. The trial court permitted a very searching cross-examination of both intervener and Roe in relation to all matters touching the particular contract in suit. We think the court did not abuse its discretion when it excluded the proposed offers upon collateral matters, many of which were admitted by intervener or established by written documents. The vital issue for the jury was the character of the contract under which intervener claims compensation from plaintiff. As to that, intervener knew what Roe did from the start, and, if Roe actually solicited plaintiff's case, intervener cannot and did not attempt to escape the consequences by pleading ignorance. Nor do we think the clause in Roe's contract of employment is important here, even if ambiguous, for the issue was: what did he do in the instant case? Intervener did not claim want of authority in Roe to do what he did do in the premises.

An exception is taken to a sentence in the court's charge which refers to the contract under which Roe worked and states that the court had opened the door for the admission of evidence showing its practical operation. The statement was evidently an inadvertence, for testimony of that character had been excluded as already noted. Considering that the exclusion was without error it is not conceived how this sentence in the charge could have prejudicially affected defendant.

Our conclusion is that no error occurred which requires a new trial. Order affirmed.

HOLT, *J.*

It appears to me the retainer of intervener as attorney for plaintiff, if not solicited, was at least procured, by Mr. Roe under the contract between intervener and Roe. This contract between in-
120 tervener and Roe, was champertous and void and it vitiated the contract between intervener and plaintiff.

I am of the opinion too that the court should have received the proof offered by defendant of "the general method—of doing business" between intervener and Roe under their contract as tending to show that Roe did, in fact, solicit this case. HALLAM, *J.*

(Endorsed:) Opinion and Syllabus. Filed July 11, 1917. I. A. Caswell, Clerk.

121 STATE OF MINNESOTA:

Supreme Court, April Term, A. D. 1917.

No. 220.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Appellant; George C. Stiles, Respondent.

Pursuant to an order of Court duly made and entered in this cause July 11 A. D. 1917,

It is here and hereby determined and adjudged that the order of the Court below, herein appealed from, to-wit, of the District Court of the Fourth Judicial District, sitting within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the Respondent above named, do have and recover of said Appellant herein the sum and amount of Forty-one and 80/100 dollars, ($41.80) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed July 31 A. D. 1917.

By the Court.

Attest: I. A. CASWELL, *Clerk.*

Statement for Judgment.

Statutory Costs $25.00; Printer $16.80; Clerk $—; Acknowledgments $—; Return $—; Postage and Express $—; Filing Mandate $—; Total $41.80.

122 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul July 31 A. D. 1917.

[SEAL.] I. A. CASWELL, *Clerk.*

State of Minnesota, Supreme Court. Transcript of Judgment. Filed July 31 A. D. 1917. I. A. Caswell, Clerk.

123 No. 20415. State of Minnesota, Supreme Court. Louis W. Holloway, Plaintiff, against J. M. Dickinson, Receiver, Appellant. Judgment Roll. Filed July 31, 1917. I. A. Caswell, Clerk.

124 *Mandate.*

STATE OF MINNESOTA,
Supreme Court, ss:

The State of Minnesota to the Honorable Judge and Officers of the District Court within and for the County of Hennepin, Greeting:

Whereas, Lately in your Court, in an action therein pending, entitled Louis W. Holloway, Plaintiff, and Jacob M. Dickinson, as Receiver, Defendant, and George C. Stiles, Intervener, a certain order was entered therein February 28, 1917, from which action of your Court an appeal thereafter was taken to this Court;

And whereas, The said cause came on to be heard before our Supreme Court, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the order of the Court below herein appealed from, be, and the same hereby is, in all things affirmed and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this Remittitur.

Now, therefore, This mandate is to you directed and certified, to inform you of these proceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith remanded to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

Witness, The Honorable Calvin L. Brown, Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this July 31, 1917.

[SEAL.]

I. A. CASWELL,
Clerk of the Supreme Court,
By —— ——, *Deputy.*

(Endorsed:) Filed Aug. 2, 1917. P. S. Neilson, Clerk, by L. E. Petri, Deputy.

125 STATE OF MINNESOTA,
County of Hennepin, ss:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

against

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant; George C. Stiles, Intervener.

Judgment.

August 2nd, 1917.

The above entitled action having been regularly placed upon the calendar of the above named court for the September, A. D. 1916, General Term thereof, came on for trial before the Court and a Jury duly impaneled to try the same on the 12th day of January, A. D. 1917, which said jury did, on the 19th day of January, A. D. 1917, duly render a verdict herein.

And thereafter said court having made and filed its order denying defendant's motion made in the alternative for judgment notwithstanding the verdict, or for a new trial, said cause was appealed to the Supreme Court of the State of Minnesota and thereafter, and on August 2nd, A. D. 1917, said Supreme Court made and filed herein its Mandate affirming in all things the order herein appealed from.

Now, pursuant to said Verdict and Mandate and on motion of D. C. Edwards, Esq., attorney for intervenor it is hereby adjudged and decreed that the intervenor recover of the defendant the sum of Two thousand, two hundred eighty-six & 11/100 Dollars, the amount of said verdict and interest to date hereof, together with the sum of Seventy and 64/100 Dollars, costs and disbursements as taxed and allowed herein, amounting in all to the sum of Two thousand, three hundred fifty-six & 75/100 Dollars, $2,356.75.

By the Court.

P. S. NEILSON,
Clerk of District Court,

By GEO. H. HEMPERLEY,
Deputy.

(Endorsed:) Judgment Roll. Filed and Judgment Docketed August 2nd A. D. 1917. P. S. Neilson, Clerk, by G. H. Hemperley, Deputy.

126 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant, and George C. Stiles, Intervener.

Notice of Appeal.

To Brooks & Jamison and D. C. Edwards, Attorneys for Intervener, and to said Intervener, and to P. S. Neilson, Esq., Clerk of the District Court of Hennepin County, Minnesota.

SIRS: You will please take notice that the defendant appeals to the Supreme Court of the State of Minnesota from the judgment in the above entitled action entered and docketed herein on the 2nd day of August, 1917, in favor of intervener above named and against the above named defendant, wherein and whereby it was adjudged that intervener have and recover of the defendant the sum of Two Thousand, Three Hundred Fifty-six and 75/100 ($2,356.75) Dollars. Such appeal is taken from said judgment and each and every part thereof. In connection with said appeal, the defendant makes the attached assignment of errors which he avers occurred in the entry of judgment in this cause and the proceedings prior thereto and upon which the defendant will rely for a reversal of said judgment, in addition to all other errors shown by the record herein.

Respectfully,
(Signed) STRINGER & SEYMOUR,
Attorneys for Defendant.

800 Germania Life Bldg., St. Paul, Minnesota.

127 STATE OF MINNESOTA,
County of Hennep n:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant, and George C. Stiles, Intervener.

Assignments of Error.

The defendant, feeling himself aggrieved by the judgment in the above entitled action, in connection with his appeal to the Supreme

Court of the State of Minnesota from said judgment, does hereby assign the following errors which he avers occurred in the entry of judgment in this cause and in the proceedings prior thereto and upon which, in addition to all other errors shown by the record, he will rely upon this appeal.

1. The Court erred in denying defendant's motion to direct a verdict in favor of defendant and against intervener, upon the ground that Section 4955 of the General Statutes of the State of Minnesota for the year 1913 (Section 2288 of the Revised Laws of the State of Minnesota for the year 1905) so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Act of Congress of the United States of April 22nd, 1908, entitled "An Act relating to the liability of common carriers by railroad to their employees in certain cases (Ch. 149, 35 Stat. L. 65), as amended by the Act of Congress of the United States of April 5, 1910, entitled "An Act to amend an act entitled 'An Act relating to the liability of common carriers by railroad to their employees in certain cases,' approved April 22, 1908." (Ch. 143), hereinafter referred to as the Federal Employers' Liability Act, is null, void, ineffectual, unconstitutional and invalid because repugnant to the Laws of the
128 United States and in particular repugnant to Section 8 of Article I of said Constitution of the United States.

2. The Court erred in denying defendant's motion for judgment in his favor, notwithstanding the verdict of the jury against him, upon the ground that Section 4955 of the General Statutes of the State of Minnesota for the year 1913, so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Federal Employers' Liability act, is null, void, ineffectual, unconstitutional and invalid because repugnant to the Laws of the United States and because repugnant to the Constitution of the United States and in particular repugnant to Section 8 of Article I of said Constitution of the United States.

3. The Court erred in holding that Section 4955 of the General Statutes of the State of Minnesota for the year 1913, so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act was neither null, void, ineffectual, unconstitutional nor invalid, because repugnant to the Laws of the United States and because repugnant to the Constitution of the United States and in particular repugnant to Section 8 of Article I of said Constitution of the United States.

4. The Court erred in entering judgment in favor of intervener and against defendant because Section 4955 of the General Statutes of the State of Minnesota for the year 1913, upon which any judgment herein must necessarily rest, is so far as the same purports to create a cause of action arising under the Federal Employers' Liability Act null, void, ineffectual, unconstitutional and invalid because repugnant to the Laws of the United States and because repugnant to the Constitution of the United States and in particular repugnant to Section 8 of Article I of said Constitution of the United States.

Wherefore, the defendant prays that the judgment against

129 him herein, for the several manifest errors above specified and each of them, and all other and manifest errors in the record herein, may be reversed, cancelled and held for naught.

(Signed) STRINGER & SEYMOUR,
Attorneys for Defendant.

800-5 Germania Life Bldg., St. Paul, Minnesota.

Personal service of the within Notice of Appeal and Assignments of Errors is hereby admitted this 10th day of August, 1917.

(Signed) BROOKS & JAMISON &
D. C. EDWARDS,
Attorneys for Intervener.

Personal service of within notice of appeal admitted Aug. 13, 1917.

(Signed) P. S. NEILSON,
Clerk of District Court,
By ED. J. GOFF, *Deputy.*

Endorsed: Filed Aug. 13, 1917. P. S. Neilson, Clerk, by Ed. J. Goff, Deputy.

130 STATE OF MINNESOTA,
County of Hennepin:

District Court, Fourth Judicial District.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant, and George C. Stiles, Intervener.

Undertaking on Appeal.

Know all men by these presents, That McNeil V. Seymour and Edward S. Stringer are held and firmly bound unto George C. Stiles, Intervener in the above entitled action in the sum of Two Hundred Fifty ($250.00) Dollars, lawful money of the United States, for which payment well and truly to be made we bind ourselves and each of our heirs, executors, administrators and assigns, jointly and severally by these presents.

The condition of this obligation is such that whereas the above named defendant Jacob M. Dickinson, as Receiver of The Chicago, Rock Island & Pacific Railway Company is about to appeal to the Supreme Court of the State of Minnesota from the judgment in the above entitled action.

Now therefore, if said defendant shall pay all costs and charges which may be awarded against him on the appeal, not exceeding the

penalty hereof, this obligation shall be void, but otherwise in full force and effect.

In testimony whereof, the parties have hereunto set their hands and seals this 8th day of August, 1917.

McNEIL V. SEYMOUR. [SEAL.]
EDWARD S. STRINGER. [SEAL.]

In presence of
(Signed) ALBERT SCHALLER.
(Signed) S. K. BAKER.

131 STATE OF MINNESOTA,
County of Ramsey, ss:

On this 8th day of August, 1917, before me, a notary public within and for said county, personally appeared McNeil V. Seymour and Edward S. Stringer, to me known to be the persons described in and who executed the foregoing instrument and acknowledged that they executed the same as their free act and deed.

(Signed) S. K. BAKER,
[SEAL.] *Notary Public, Ramsey County, Minn.*

My commission expires July 6, 1921.

STATE OF MINNESOTA,
County of Ramsey, ss:

McNeil V. Seymour and Edward S. Stringer, being duly sworn, depose and say that each of them is a freeholder of the County of Ramsey and State of Minnesota. Each of them is worth in excess of Five Hundred ($500.00) Dollars, over and above his just debts and liabilities and exclusive of his property exempt from execution, garnishment and attachment.

(Signed) McNEIL V. SEYMOUR.
(Signed) EDWARD S. STRINGER.

Subscribed and sworn to before me this 8th day of August, 1917.

(Signed) S. K. BAKER,
[SEAL.] *Notary Public, Ramsey County, Minn.*

My commission expires July 6, 1921.

Endorsed: Filed Aug. 13, 1917. P. S. Neilson, Clerk, by Ed. J. Goff, Deputy.

The within Undertaking & sureties are hereby approved Aug. 10th, 1917.

H. D. DICKINSON,
District Judge.

Service of the within Undertaking admitted this 10 day of Aug., 1917.

BROOKS & JAMISON AND
D. C. EDWARDS,
Attorneys for Intervener.

132 STATE OF MINNESOTA,
County of Hennepin, ss:

District Court, Fourth Judicial District.

I, P. S. Neilson, Clerk of the above named Court, do hereby certify and return to the Supreme Court of the State of Minnesota, that I have compared the papers writing to which this certificate is attached with the original Notice of Appeal to Supreme Court, Assignments of Error, and Undertaking on Appeal, in the action therein entitled, as the same appear of record and on file in the said Clerk's office, at the Court House in said Hennepin County, Minnesota, and find the same to be true and correct copies thereof, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, at the City of Minneapolis, in said County, this 13th day of August, A. D. 1917.

(Signed) P. S. NEILSON,
[SEAL.] *Clerk of District Court.*
(Signed) By C. U. WILLIAMSON, *Deputy.*

Endorsed: Filed Aug. 14, 1917. I. A. Caswell, Clerk.

133 STATE OF MINNESOTA:

Supreme Court.

20665.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver, Appellant; GEORGE C. STILES, Respondent.

Per Curiam:

Ordered that the judgment of the district court, herein appealed from, be and it is hereby in all things affirmed.

(Endorsed:) Filed Aug. 23, 1917. I. A. Caswell, Clerk.

134 STATE OF MINNESOTA,

Supreme Court, — Term, A. D. 1917.

No. —.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Appellant; George C. Stiles, Respondent.

Pursuant to an order of Court duly made and entered in this cause August 23, A. D. 1917

It is here and hereby determined and adjudged that the judgment of the Court below, herein appealed from, to-wit, of the District Court of the Fourth Judicial District, sitting within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that the Respondent above named, do have and recover of said Appellant herein the sum and amount of Twenty-five and 00/100 Dollars, ($25.00) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed September 12, A. D. 1917.

By the Court.

Attest: I. A. CASWELL, *Clerk.*

Statement for Judgment.

Statutory Costs $25.00; Printer $—; Clerk $—; Acknowledgments $—; Return $—; Postage and Express $—; Filing Mandate $—: Total $25.00.

135 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul Sept. 12, A. D. 1917.

[SEAL.] I. A. CASWELL, *Clerk.*

State of Minnesota, Supreme Court. Transcript of Judgment. Filed September 12, A. D. 1917. I. A. Caswell, Clerk.

136 No. 20665. State of Minnesota, Supreme Court. Louis W. Holloway, Plaintiff, against Jacob M. Dickinson, Receiver, Appellant; George C. Stiles, Respondent. Judgment Roll. Filed September 12, 1917. I. A. Caswell, Clerk.

137 STATE OF MINNESOTA:

Supreme Court, April Term, 1917.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Defendant-Appellant.

and

GEORGE C. STILES, Intervener-Respondent.

Stipulation.

It is stipulated that the Clerk in making his return to the Supreme Court of the United States upon writ of error shall include the following portions of the record only:

1. Complaint.
2. Answer.
3. Reply.
4. Complaint in intervention.
5. Answer to complaint in intervention.
6. Reply to answer to complaint in intervention.
7. Settled case, omitting therefrom all testimony introduced by defendant in defense and all testimony introduced by intervener in rebuttal, and omitting therefrom intervener's exhibits "F" to "O," inclusive, and defendant's exhibits "1" to "14" inclusive, and that in lieu of said omitted testimony and exhibits, the Clerk of this Court substitute in said transcript of the record the following:

138 "The defendant offered certain testimony and exhibits addressed solely to the issue of the mental competency of the plaintiff and the issue whether the contract of employment referred to in the complaint in intervention was champertous. Intervener offered testimony and exhibits in rebuttal addressed to the same issues. Said testimony not being material upon writ of error is, by stipulation of the parties, not returned in full, but in the event the Supreme Court should deem it necessary to have the same returned, the parties suggest that the Clerk of the Supreme Court of Minnesota be ordered to transmit the same at the expense of defendant."

8. Notice of defendant's alternative motion for judgment or a new trial.
9. Order denying defendant's alternative motion for judgment or a new trial.
10. Notice of appeal from order denying defendant's motion for judgment or a new trial.

11. Opinion of Supreme Court on said appeal.
12. Order of Supreme Court for judgment affirming said order.
13. Judgment of Supreme Court affirming order appealed from.
14. Mandate to District Court of Hennepin County, Minnesota.
15. Judgment of District Court of Hennepin County, Minnesota.
16. Notice of appeal from judgment and assignment of errors accompanying.
17. Order by Supreme Court for judgment affirming judgment of District Court of Hennepin County, Minnesota.
18. Judgment of Supreme Court affirming judgment of District Court of Hennepin County, Minnesota.
19. This stipulation.
20. Also all papers filed subsequent to the entry of judgment preliminary to the issuance of writ of error.

It is further stipulated that the foregoing constitute all portions of the record necessary to a consideration of the questions to be
139 reviewed upon writ of error, and that all portions of the record not herein mentioned are immaterial.

Dated September 20th, 1917.

BROOKS & JAMISON &
D. C. EDWARDS,
Attorneys for Respondent, Minneapolis, Minn.
STRINGER & SEYMOUR,
Attorneys for Appellant.

(Endorsed:) Filed Sep. 20, 1917. I. A. Caswell, Clerk.

140 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, clerk of said court, do hereby certify that the foregoing is a true, full and complete transcript of such part of the record and proceedings indicated in the stipulation or præcipe for transc-ipt of the parties in the case of Louis W. Holloway, Plaintiff, vs. Jacob M. Dickinson, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Appellant, George C. Stiles, Respondent, and also of the opinions of the court rendered therein together with the assignment of errors, as the same now appear on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this October 2, 1917.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

141 STATE OF MINNESOTA:

Supreme Court.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island and Pacific Railway Company, Defendant and Appellant, and George C. Stiles, Intervener and Respondent.

Assignment of Errors and Prayer for Reversal.

The defendant and appellant, Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company, in connection with his petition for a Writ of Error makes the following Assignment of Errors which he avers occurred in the entry of the final judgment in this cause and in proceedings prior thereto, as follows:

1. The Supreme Court of the State of Minnesota erred in sustaining the District Court of Hennepin County, Minnesota in denying defendant's motion to direct a verdict in favor of the defendant and against the intervenor, upon the ground that section 4955 of the General Statutes of the State of Minnesota for the year 1913 (Section 2288 of the Revised Laws of the State of Minnesota for the year 1905) so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Act of Congress of the United States of April 22, 1908, entitled "An Act relating to the liability of common carrier- by railroad to their employees in certain
142 Congress of the United States of April 5, 1910, entitled "An cases (Ch. 149, 35 Stat. L. 65) as amended by the Act of Act to amend an act entitled 'An act relating to the liability of common carriers by railroad to their employees in certain cases,' approved April 22, 1908," (Ch. 143) hereinafter referred to as the Federal Employers' Liability Act is null, void, ineffectual, unconstitutional and invalid, because repugnant to the laws of the United States, and in particular repugnant to said Federal Employers' Liability Act, and because repugnant to the Constitution of the United States and in particular repugnant to Section 8 of Article 1 of said Constitution of the United States.

2. The Supreme Court of the State of Minnesota erred in sustaining the District Court of Hennepin County, Minnesota, in denying defendant's motion for judgment in his favor, notwithstanding the verdict of the jury against him, upon the ground that Section 4955 of the General Statutes of the State of Minnesota for the year 1913, so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act, is null, void, ineffectual, unconstitutional and invalid because repugnant to the Laws of the United States and because repugnant to the Constitution of the United States, and in particular repugnant to said

Federal Employers' Liability Act, and to Section 8 of Article 1 of said Constitution of the United States.

3. The Supreme Court of the State of Minnesota erred in sustaining the District Court of Hennepin County, Minnesota, in holding that Section 4955 of the General Statutes of the State of Minnesota for the year 1913, so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act, was neither null, void, ineffectual, unconstitutional nor invalid because repugnant to the Laws of the
143 United States, and in particular repugnant to said Federal Employers' Liability Act, and because repugnant to the Constitution of the United States and in particular repugnant to Section 8 of Article 1 of said Constitution of the United States.

4. The Supreme Court of the State of Minnesota erred in entering judgment affirming the judgment of the District Court of Hennepin County, Minnesota, in favor of intervenor and against the defendant because Section 4955 of the General Statutes of the State of Minnesota for the year 1913, upon which any judgment herein must necessarily rest, is, so far as the same purports to create a cause of action arising under the Federal Employers' Liability Act, null, void, ineffectual, unconstitutional and invalid because repugnant to the Laws of the United States and because repugnant in particular to said Federal Employers' Liability Act, and because repugnant to the Constitution of the United States and in particular repugnant to Section 8 of Article 1 of said Constitution of the United States.

Wherefore, because of said errors and all other manifest errors shown by the record in this cause, Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company, prays that judgment of said Supreme Court of the State of Minnesota be reversed and set aside and held for naught, and that judgment be rendered for him granting unto him his rights under the Constitution and laws of the United States, together with his costs and disbursements in that behalf unlawfully sustained.

McNEIL V. SEYMOUR,
EDWARD S. STRINGER.
800-805 *Germania Life Building, St. Paul, Minnesota, Attorneys for Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company.*

[Endorsed:] Assignment of Errors and Prayer for Reversal. Filed Sep. 20, 1917. I. A. Caswell, Clerk.

144 STATE OF MINNESOTA:

Supreme Court.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island and Pacific Railway Company, Defendant and Appellant, and George C. Stiles, Intervenor and Respondent.

Petition for Writ of Error.

The petition of Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company, defendant, and appellant in the above entitled action, respectfully shows:

On the 12th day of September, 1917, the Supreme Court of the State of Minnesota did enter a judgment whereby it did in all things affirm a judgment of the District Court of Hennepin County, Minnesota, in favor of the intervenor-respondent and against your petitioner for the sum of Two Thousand Three Hundred Fifty-six Dollars and seventy-five cents ($2,356.75).

Said judgment was based wholly upon Section 4955 of the General Statutes of the State of Minnesota for the year 1913 (Section 2288 of the Revised Laws of the State of Minnesota for the year 1905). In said judgment and the proceedings prior thereto, manifest and grievous error occurred to the great damage of your petitioner. Said judgment was and is the final judgment in said cause, and said Supreme Court of the State of Minnesota was and is the highest court of the state of Minnesota, in which a decision in this suit can be had, and in said suit there was drawn in question
145 the validity of a statute of the State of Minnesota, (to-wit, section 4955 of the General Statutes of Minnesota for the year 1913) on the ground of its being repugnant to the Constitution and the laws of the United States, and the decision of the Supreme Court of the state of Minnesota was in favor of the validity of said statute, contrary to the claim of your petitioner in this respect.

Wherefore, your petitioner, feeling himself aggrieved by said final judgment of said Supreme Court of Minnesota, hereby prays a writ of error from said judgment to the United States Supreme Court, to the end that said judgment and the record may be brought before said United States Supreme Court. Your petitioner files herewith his Assignment of Errors.

JACOB M. DICKINSON,
As Receiver of The Chicago, Rock Island and Pacific Railway Co.,
By McNEIL V. SEYMOUR AND
EDWARD S. STRINGER,
His Attorneys.

Saint Paul, Ramsey County, Minnesota.

STATE OF MINNESOTA,
County of Ramsey, ss:

E. S. Stringer, being duly sworn, deposes and says that he is one of the attorneys for Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company, the above named petitioner. The foregoing petition by him subscribed is true of his own knowledge.

E. S. STRINGER.

Subscribed and sworn to before me This 20th day of Sept. 1917.

[Notarial Seal, Ramsey County, Minn.]

M. McGINN,
Notary Public, Ramsey County, Minnesota.

My commission expires January 17, 1921.

146 STATE OF MINNESOTA:

Supreme Court.

LOUIS W. HOLLOWAY, Plaintiff,

vs.

JACOB M. DICKINSON, as Receiver of the Chicago, Rock Island and Pacific Railway Company, Defendant and Appellant, and George C. Stiles, Intervenor and Respondent.

Order Allowing Writ of Error.

Upon reading the foregoing petition for a Writ of Error and inspecting all the records and files in this action,

It is ordered that a Writ of Error as prayed for in said petition be and the same hereby is allowed: provided however, that petitioner, Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company shall give a bond in the sum of twenty-five hundred dollars, according to law. Said bond when approved to act as a supersedeas.

Dated September 20th, 1917.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

146½ [Endorsed:] Petition for Writ of Error and Order Allowing. Filed Sep. 20, 1917. I. A. Caswell, Clerk.

147 JACOB M. DICKINSON, as Receiver of The Chicago, Rock Island and Pacific Railway Company, Plaintiff in Error,

vs.

GEORGE C. STILES, Defendant in Error.

Bond.

Know all men by these presents that American Surety Company, a corporation organized and existing under the laws of the state of New York is held and firmly bound unto George C. Stiles in the sum of twenty-five hundred dollars ($2,500.00) to be paid to said George C. Stiles, to which payment well and truly to be made, it binds itself, its successors and assigns firmly by these presents.

Dated this 10th day of September 1917.

Whereas, the above named Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company, seeks to prosecute his writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Minnesota,

Now therefore, the condition of this obligation is such, that if the above named Jacob M. Dickinson as Receiver of The Chicago, Rock Island and Pacific Railway Company shall prosecute his said Writ of Error to effect and answer all costs and damages which may be adjudged if he shall fail to make good his plea, then this obligation to be void; otherwise, to remain in full force and effect.

AMERICAN SURETY COMPANY OF NEW YORK,
By JOHN W. MITCHELL,
Resident Vice-President.

Attest:
[SEAL.] I. G. KENNEDY,
Resident Assistant Secretary.

Signed, sealed and delivered in the presence of
J. W. JAMES.
CATHERINE BURNS.

STATE OF MINNESOTA,
County of Ramsey, ss:

On this 10th day of September, A. D. 1917, before me personally appeared John W. Mitchell and I. G. Kennedy to me personally known, who, being by me each duly sworn, did say on oath: That they are the Resident Vice President and the Resident Assistant Secretary, respectively, of the American Surety Company of New York, the corporation described in and which executed the foregoing instrument; that the seal affixed to said instrument is the corporate seal of said corporation; that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and

said John W. Mitchell and said I. G. Kennedy each acknowledged the said instrument to be the free act and deed of said corporation.

[SEAL.] A. P. MITCHELL,
Notary Public, Ramsey County.

My commission expires Feb. 10, 1920.

148 Bond approved and to operate as a supersedeas.
Dated September 20th, 1917.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of Minnesota.

(Endorsed:) Filed Sep. 20, 1917. I. A. Caswell, Clerk.

[Endorsed:] Bond. Copy.

149 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable Justices of the Supreme Court of the State of Minnesota, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court of the State of Minnesota, before you or some of you, being the highest court of law or equity of said state in which a decision could be had in the said suit of Louis W. Holloway, plaintiff, against Jacob M. Dickinson, as Receiver of The Chicago, Rock Island & Pacific Railway Company, defendants-appellants, and George C. Stiles, intervener-respondent, wherein was drawn in question the validity of a statute of or an authority exercised under said state, on the ground of their being repugnant to the constitution, treaties or laws of the United States, and the decision was in favor of their validity, a manifest error hath happened to the great damage of said Jacob M. Dickinson, as Receiver of The Chicago, Rock Island & Pacific Railway Company, as by his complaint appears. We being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties aforesaid, in this behalf do command you, if judgment be therein given, that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

150 Witness, the Honorable Edward D. White, Chief Justice of the United States, this 20th day of September, in the year of our Lord One Thousand Nine Hundred and Seventeen.

Done in the City of Saint Paul, County of Ramsey, State of Min-

nesota with the seal of the District Court of the United States for the district of Minnesota attached.

[Seal U. S. Dist. Court, Dist. of Minnesota, Third Division.]

CHARLES L. SPENCER,
Clerk of the District Court of the United States for the District of Minnesota,
By MARGARET L. MULLANE,
Deputy Clerk.

Allowed by
CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

150½ [Endorsed:] Writ of Error. Filed Sep. 20, 1917. I. A. Caswell, Clerk.

151 STATE OF MINNESOTA,
Supreme Court, ss:

I, I. A. Caswell, clerk of the said court, do hereby certify that there was lodged with me as such clerk on September 20, 1917, in the matter of Louis W. Holloway, Plaintiff, vs. Jacob M. Dickinson, as Receiver of the Chicago, Rock Island & Pacific Railway Company, Appellant, George C. Stiles, Respondent.

1. The original bond of which a copy is herein set forth.
2. Copies of the writ of error, as herein set forth,—one for each defendant and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in St. Paul, Minnesota, this October 2, 1917.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

152 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to George C. Stiles, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Minnesota, wherein Jacob M. Dickinson, as Receiver of The Chicago, Rock Island & Pacific Railway Company, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Hon. Calvin L. Brown, Chief Justice of the Supreme Court of the State of Minnesota, this 20th day of September, 1917.

CALVIN L. BROWN,
Chief Justice of the Supreme Court of the State of Minnesota.

Attest:

I. A. CASWELL,
Clerk of Supreme Court of Minnesota.

We, attorneys of record for the defendant in error, do hereby admit due and personal service of the within and foregoing citation this 20th day of September, 1917.

BROOKS & JAMISON AND
D. C. EDWARDS,
Attorneys for George C. Stiles.

[Endorsed:] Citation. Filed Sep. 20, 1917. I. A. Caswell, Clerk.

153 UNITED STATES OF AMERICA,
Supreme Court of Minnesota, ss:

In obedience to the commands of the within writ, I hereby transmit to the Supreme Court of the United States a duly certified transcript of such parts of the record and proceedings in the within entitled case as are indicated in the stipulation or præcipe for transcript of the parties, with all things concerning the same.

In witness whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Minnesota, at my office, in the city of St. Paul, Minnesota, this October 2, 1917.

[Seal of the Supreme Court, State of Minnesota.]

I. A. CASWELL,
Clerk Supreme Court of Minnesota.

Endorsed on cover: File No. 26,202. Minnesota Supreme Court. Term No. 735. Jacob M. Dickinson, as receiver of the Chicago, Rock Island & Pacific Railway Company, plaintiff in error, vs. George C. Stiles. Filed October 6th, 1917. File No. 26,202.

26,202.

United States Supreme Court.

OCTOBER TERM, 1917.

No. 735.

JACOB M. DICKINSON, as Receiver of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

Plaintiff in Error,

vs.

GEORGE C. STILES,

Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

BRIEF OF PLAINTIFF IN ERROR.

McNEIL V. SEYMOUR,
EDWARD S. STRINGER,
Counsel for Plaintiff in Error,
Saint Paul, Minnesota.

SUBJECT INDEX.

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26,202.

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JACOB M. DICKINSON, as Receiver of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

Plaintiff in Error,

vs.

GEORGE C. STILES,

Defendant in Error.

In Error to the Supreme Court of the State of Minnesota.

STATEMENT OF THE CASE.

The purpose of this writ of error is to review a final judgment of the Supreme Court of Minnesota, holding a statute of that state valid, against the objection that it was repugnant to the constitution and laws of the United States.

On March 3, 1916, Louis W. Holloway was injured at Moline, Illinois, while in the employ of the plaintiff in error. On April 5, 1916, he commenced an action against

plaintiff in error in the district court of Hennepin County, Minnesota. After the case was at issue and before trial, plaintiff in error settled his cause of action by paying the sum of $6,500 to Holloway's guardian without the knowledge of Holloway's attorney. Holloway's case was based wholly upon the so-called Federal Employers' Liability Act. In his original complaint he alleged that "at the time of the injury, both the plaintiff and the defendant were actively and actually engaged and engaging in interstate commerce"—(see the third paragraph of the complaint, pages 2 and 3 of Record). The complaint under the Minnesota practice, sufficiently alleges a cause of action under the Federal Employers' Liability Act. See *Lewis* v. *D. R. G. Ry. Co.*, 131 Minn. 122; 154 Northwestern, 945.

Holloway's attorney was George C. Stiles, defendant in error. After the settlement, Stiles intervened and by his complaint in intervention claimed his fees from plaintiff in error, pursuant to his contract with Holloway, for one-third of the settlement. His claim to fees was made pursuant to section 4955 of the General Statutes of Minnesota for the year 1913, reading, so far as material to this case, as follows:

> "An attorney has a lien for his compensation, whether the agreement therefor be express or implied * * *. Upon the cause of action from the time of the service of the summons therein."

The full text of the statute is found in the appendix, on page 27.

His right of recovery was duly placed at issue and tried by the court and a jury. After a trial lasting over a week, the jury rendered a verdict in his favor and against plain-

tiff in error. Among other defenses, plaintiff in error asserted that Holloway was insane at the time he employed the defendant in error (Stiles) and that, therefore, the contract of employment was void. Plaintiff in error also claimed that the contract was invalid because champertous. These two defenses were disposed of contrary to the contention of plaintiff in error in the state courts and are not open to this court for examination.

On the trial no testimony was introduced showing how the accident to Holloway occurred, except that Holloway's complaint, alleging that at the time of the injury both employe and carrier were engaged in interstate commerce, was introduced in evidence by defendant in error (page 13 of Record). (See testimony in chief of defendant in error, pages 13 to 47.)

Pursuant to Rule 8 of this court, all of the testimony introduced at the trial by plaintiff in error and by defendant in error in rebuttal has been omitted from the return to this court, and in lieu of such omitted testimony is found on page 47 of the Record a statement of the nature thereof. This is pursuant to the stipulation of the parties on pages 75 and 76 of the Record. It will be noted that the parties have expressly stipulated that the omitted testimony has no relevancy whatever to the question presented on this writ of error.

At the close of all the testimony, the plaintiff in error moved the court to direct a verdict in his favor (pages 47 and 48) on the ground that the statute of the state of Minnesota, hereinbefore referred to, purporting to impress a lien upon the cause of action was void so far as might concern a cause of action arising under the so-called Federal

Employers' Liability Act, because repugnant to the laws and Constitution of the United States.

The lower court held the statute valid, refusing to direct a verdict. A motion for judgment in favor of the plaintiff in error, notwithstanding the verdict, was made on the same ground and denied (pages 54 to 57).

An appeal from the order denying judgment was taken to the Supreme Court of the State of Minnesota and the order affirmed (pages 57 to 66) see *Holloway* v. *Dickinson*, —*Stiles, Intervenor*, 163 *Northwestern*, 791, 137 Minn. 410). This opinion will be found on pages 62 to 65 of the record. Upon the filing of the mandate with the lower court (page 67) and in compliance therewith, judgment was entered for $2,356.75 in favor of the defendant in error and against the plaintiff in error (page 68). An appeal was taken from this judgment to the Supreme Court and affirmed in a per curiam opinion, pursuant to which final judgment of the Supreme Court was entered September 12, 1917, affirming the judgment of the district court of Hennepin County, Minnesota (pages 69 to 74).

By this writ of error, the plaintiff in error seeks to reverse this final judgment. The only question before this court is the validity of the Minnesota statute creating an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act. This federal question was presented squarely to the state courts upon the following occasions:

1. Motion to direct a verdict (pages 47 and 48).

2. Motion for judgment notwithstanding the verdict (pages 54 and 55).

3. Upon appeal from the order denying judgment (see Assignment of Error 1, page 60).

4. Upon appeal from the judgment (see Assignments of Error 1 to 4, pages 69 to 71).

Upon each of these occasions, the state courts passed upon the question and held the statute valid. The Supreme Court of Minnesota considered the question fully in its opinion (pages 63 and 64).

SPECIFICATIONS OF ERROR.

Plaintiff in error specifies the following errors upon which he relies:

1. The Supreme Court of the State of Minnesota erred in sustaining the District Court of Hennepin County, Minnesota, in denying defendant's (plaintiff in error) motion to direct a verdict in favor of the defendant (plaintiff in error) and against the intervenor (defendant in error) upon the ground that section 4955 of the General Statutes of the State of Minnesota for the year 1913 (Section 2288 of the Revised Laws of the State of Minnesota for the year 1905) so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Act of Congress of the United States of April 22, 1908, entitled "An Act relating to the liability of common carriers by railroad to their employees in certain cases (Ch. 149, 35 Stat. L. 65) as amended by the Act of Congress of the United States of April 5, 1910, entitled "An Act to amend an act entitled 'An Act relating to the liability of common carriers by railroad to their employees in certain cases,' approved Apr. 22, 1908" (Ch. 143) hereinafter referred

to as the Federal Employers' Liability Act, is null, void, ineffectual, unconstitutional and invalid, because repugnant to the Laws of the United States, and in particular repugnant to said Federal Employers' Liability Act, and because repugnant to the Constitution of the United States, and in particular repugnant to Section 8 of Article 1 of said Constitution of the United States.

2. The Supreme Court of the State of Minnesota erred in sustaining the District Court of Hennepin County, Minnesota, in denying defendant's (plaintiff in error) motion for judgment in his favor, notwithstanding the verdict of the jury against him, upon the ground that Section 4955 of the General Statutes of the State of Minnesota for the year 1913, so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act, is null, void, ineffectual, unconstitutional and invalid because repugnant to the Laws of the United States and because repugnant to the Constitution of the United States, and in particular repugnant to said Federal Employers' Liability Act, and to Section 8, of Article 1 of said Constitution of the United States.

3. The Supreme Court of the State of Minnesota erred in sustaining the District Court of Hennepin County, Minnesota, in holding that section 4955 of the General Statutes of the State of Minnesota for the year 1913, so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act, was neither null, void, ineffectual, unconstitutional and invalid, because repugnant to the Laws of the United States, and in particular repugnant to said Fed-

eral Employers' Liability Act, and because repugnant to the Constitution of the United States, and in particular repugnant to Section 8 of Article 1 of said Constitution of the United States.

4. The Supreme Court of the State of Minnesota erred in entering judgment affirming the judgment of the District Court of Hennepin County, Minnesota, in favor of intervenor (defendant in error) and against the defendant (plaintiff in error) because section 4955 of the General Statutes of the State of Minnesota for the year 1913, upon which any judgment herein must necessarily rest, is, so far as the same purports to create an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act, null, void, ineffectual, unconstitutional and invalid because repugnant to the Laws of the United States and because repugnant in particular to said Federal Employers' Liability Act, and because repugnant to the Constitution of the United States, and in particular repugnant to Section 8 of Article 1 of said Constitution of the United States.

ARGUMENT.

It is sought to review the judgment of the state court holding valid Section 4955 of the General Statutes of Minnesota for 1913, hereinbefore referred to, as applied to the facts of this particular case. The case is, therefore, brought to this Court by writ of error pursuant to the recent Act of Congress, approved September 6, 1916, "An Act to amend the judicial code, etc.," prescribing this procedure in a suit "where is drawn in question the validity of a statute of any state * * * on the ground of their being repugnant to the Constitution, treaties or laws of the United States and the decision is in favor of their validity."

Will the Court please note the language of the Minnesota statute, the validity of which we assail:

> "An attorney *has a lien* * * * *upon the cause of action.*"

What defendant in error asked in his complaint in intervention and what he received was a money judgment and not the foreclosure of a lien. This, however, was in accordance with the state practice. *Johnson* v. *Great Northern Ry. Co.*, 128 Minn. 365, 151 N. W. 125; *Davis* v. *Great Northern Ry. Co.*, 128 Minn. 354, 151 N. W. 128.

It is only because of the existence of this statute that defendant in error could in any event obtain any relief. Prior to its passage on March 6th, 1906, at common law an attorney had no lien upon a cause of action in Minnesota. *Hammons* v. *Great Northern*, 53 Minn. 249, 54 N. W. 1108; *Anderson* v. *Itasca Lumber Co.*, 86 Minn. 480, 91 N. W.

12; *Boogren* v. *City Railway*, 97 Minn. 51, 106 N. W. 104; *Northrup* v. *Hayward*, 102 Minn. 307, 113 N. W. 701. Defendant in error's judgment, therefore, rests wholly on this statute.

THIS STATUTE IS NULL AND VOID AS APPLIED TO A CAUSE OF ACTION ARISING UNDER THE FEDERAL EMPLOYERS' LIABILITY ACT AND IS INVALID BECAUSE REPUGNANT TO THAT ACT AND REPUGNANT TO THE UNITED STATES CONSTITUTION.

The field of liability of employer to employee when both are engaged in interstate commerce lies in that group of subjects noted in *Simpson v. Shepard*, 230 U. S. 352; 33 S. C. R. 729, which the state may control until Congress legislates thereon; but over which any authority of the state immediately ceases when Congress speaks.

> "True, prior to the present act, the laws of the several states were regarded as determinative of the liability of employers engaged in interstate commerce for injuries received by their employes while engaged in such commerce, but that was because Congress, although empowered to regulate that subject, had not acted thereon and *because the subject is one which falls within the police power of the states in the absence of action by Congress* (citing cases). Inaction of Congress in no way affected its power over the subject (citing cases), *and now that Congress has acted, the laws of the states, insofar as they cover the same field, are superceded, for necessarily that which is not supreme must yield to that which is.*"
>
> *Mondou* v. *N. Y. N. H. & H. R. R.*, 223 U. S., page 1, 32 S. C. R. 169.

See also cases cited in next paragraph.

BY THE PASSAGE OF THE FEDERAL EMPLOYERS' LIABILITY ACT CONGRESS LEGISLATED UPON EVERY PHASE OF THE SUBJECT OF THE PAYMENT OF DAMAGES FOR INJURIES TO EMPLOYES ENGAGED IN INTERSTATE COMMERCE. IT LEGISLATED NOT ONLY UPON THE AMOUNT THAT WAS TO BE PAID BUT TO WHOM IT WAS TO BE PAID.

> "By the passage of the Federal Employers' Liability Act, Congress exercised complete jurisdiction over the liability of interstate employers for injury to interstate employes and all state laws on the subject are superseded and inoperative."
>
> *Mondou* v. *N. Y. N. H. & H. R. R.*, supra.

In *Fulgham* v. *R. R. Co.*, 167 Fed. 660, the Court said:

> "It is clear that the act of April 22, 1908, supra, superseded and took the place of all state statutes regulating relations of employers and employes engaged in interstate commerce by railroads. It covered not only injuries sustained by employes engaged in that commerce resulting from the negligence of the master to his servants and from defects in the designated instrumentalities in use in that commerce, but also dealt with contributory and comparative negligence and assumed risk, making in certain cases at least, the master an insurer of the safety of the servant while in his employ in that commerce. *It covers and overlaps the whole of said legislation and is therefore, exclusive. All state legislation on that subject must give way before the act.*"

In *M. K. & T. Ry. Co.* v. *Wulf*, 226 U. S. 570, 33 S. C. R. 135, the Court said:

> "The Court was presumed to be cognizant of the enactment of the Employers' Liability Act and to know with respect to the responsibility of interstate carriers by railroad to their employes injured in such commerce after its enactment, *it had the effect of superseding state laws upon the subject.*"

In *Michigan Central Ry. Co.* v. *Vreeland*, 227 U. S. 59, 33 S. C. R. 192, the Court said, discussing the act of April 22, 1908:

> "*We may not piece out this act of Congress by resorting to the local statutes of the state of procedure or that of the injury.* The act is one which relates to the liability of railroad companies engaged in interstate commerce to their employes while engaged in such commerce. The power of Congress to deal with the subject comes from its power to regulate commerce between the states. Prior to this act of Congress had not deemed it expedient to legislate upon the subject. The subject is one which falls within the police power of the state in the absence of legislation by Congress. *By this act Congress has undertaken to cover the subject of the liability of railroad companies to their employes injured while engaged in interstate commerce. This exertion of a power which is granted in express terms must supersede all legislation over the same subject by the states.* It therefore follows that in respect of state legislation prescribing the liability of such carriers for injuries to their employes while engaged in interstate commerce, this act is paramount and exclusive and must remain so until Congress shall again remit the subject to the reserved police power of the state."

In *St. Louis, Iron Mountain & Southern Ry.* v. *Hesterly*, 228 U. S. 702, 33 S. C. R. 703, the Court had under discussion a judgment entered in the state court under the state statute. The decedent had been engaged in interstate commerce, but the state court had held that in that event a recovery might be had under either statute, and that the act of Congress was only supplementary to the state enactment. The Court said:

> "Coming to the merits, it is now decided that the act of Congress *supersedes state laws in the matter with which it deals. The act deals with the liability of carriers while engaged in commerce between the states for defects in cars.*"

In *St. L. S. F. & Tex. Ry.* v. *Seale*, 229 U. S. 156, 33 S. C. R. 651, the Court said:

> "If the Federal statute was applicable, the state statute was excluded by reason of the supremacy of the former under the national constitution."

In *North Carolina Ry. Co.* v. *Zachary*, 232 U. S. 248, 34 S. C. R. 305, the Court said:

> "In order to bring the case within the terms of the Federal act, the defendant must have been at the time of the occurrence in question engaged as a common carrier in interstate commerce and plaintiff's intestate must have been employed by said carrier in such commerce. If this fact appeared, the Federal act governed to the exclusion of the several acts of the state."

In *Seaboard Air Line* v. *Horton*, 233 U. S. 492, 34 S. C. R. 635, the Court said:

> "It is not to be conceived that in enacting a general law for establishing and enforcing the responsibility of common carriers by railroads to their employes in interstate commerce, Congress intended to permit the legislatures of the several states to determine the effect of contributory negligence and assumption of risk by enacting statutes for the safety of employes since this would in effect relegate to state control two of the essential factors that determine the responsibility of the employer."

In *Wabash Ry.* v. *Hayes*, 234 U. S. 86, 34 S. C. R. 729, the Court said:

> "Had the injury occurred in interstate commerce, as was alleged, the Federal act undoubtedly would have been controlling and a recovery could not have been had under the common or statute law of the state. In other words, the Federal act would have been exclusive in its operation, not merely cumulative."

See also *Philadelphia, Baltimore & Washington* v. *Schubert*, 224 U. S. 603, 32 S. C. R. 589; *Pederson* v. *Del. Lack.*

& Western, 229 U. S. 146, 33 S. C. R. 648; *Illinois Central Ry. Co.* v. *Behrens*, 233 U. S. 473, 3 S. C. R. 646.

In *Staley* v. *Illinois Central Ry. Co.*, 109 N. E. 342, 268 Ill. 356, the Supreme Court of Illinois had under consideration the question of whether the Illinois Compensation Act applied to an injury to an employe engaged in interstate commerce, in the absence of negligence by the carrier. In terms it did. It was argued that the Federal Act covered only that part of the relation of master and servant where there was negligence by the carrier and that Congress had not touched upon the relation where negligence did not exist. The Court held that Congress by the Federal act had covered the entire field, not only where negligence existed, but also in the absence of negligence. The Court asked this question:

> "What is the 'subject,' 'particular subject,' 'subject-matter,' 'field,' 'particular field,' or 'chosen field' covered by the Federal Employers' Liability Act?"

After a careful review of the authorities, the Court answers the question in this way:

> "The wording of the statute and the reasoning in these decisions lead inevitably to the conclusion that 'the particular subject,' 'subject-matter,' 'field,' or 'chosen field' taken possession of by the Federal Employers' Liability Act was the *employer's liability for injuries to employes in interstate transportation by rail*, and the real question, as clearly stated in distinct terms in several of the cases that we have quoted from in deciding whether the federal statute is applicable, is whether the injury for which the suit was brought was sustained while the company and the injured employe were engaged in interstate commerce. *The Federal Employers' Liability Act has taken possession of—has occupied—that field for the purpose of calling into play therein this exclusive power of the*

federal government. Necessarily, all common or statute law of this state on that subject has been superseded. *The field of liability as to employes injured while engaged in interstate commerce on railroads is occupied exclusively by the Federal Employers' Liability Act—and that, too, regardless of the negligence or lack of negligence of either party to the litigation. Beyond question, the Federal Employers' Liability Act superseded, as to injuries of employes engaged on railroads in interstate commerce, all statute or common law in force in the state of Illinois previous to the passage of the Workmen's Compensation Act."*

This case was expressly approved by the recent decision of this Court in the case of *New York Central R. R. Co.* v. *Winfield,* 244 U. S. 147, 37 S. C. R. 546, in which it was held that by the passage of the Federal Employers' Liability Act, Congress had taken from the state the right to legislate with respect to the payment of damages by master to servant when both were engaged in interstate commerce, even though no negligence existed. In other words, this court held that because the Federal Act was silent on the liability of the carrier where no negligence existed, that in such event no liability existed. See also the companion case of *Erie R. R. Co.* v. *Winfield,* 244 U. S. 170, 37 S. C. R. 556.

Not only do all state enactments which are in conflict with the Federal Act become inoperative, but also all state laws which are in accord or supplemental if they cover the same field.

Staley v. *Illinois Central,* supra.

New York Central v. *Winfield,* supra.

Erie Railroad Co. v. *Winfield,* supra.

In *Prigg* v. *Commonwealth,* 16 Peters, 539, 10 Law Edition 1060, the Supreme Court of the United States said:

"If Congress have a constitutional power to regulate a particular subject and they do actually regulate it in a given manner and in a certain form, *it cannot be that the state legislature have a right to enforce and as it were, by way of complement to the legislation of Congress, to prescribe additional regulations and what they may deem auxiliary provisions for the same purpose. In such a case the legislation of Congress, in what it does not prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it.* * * * The will of Congress upon the whole subject is as clearly established *by what it has not declared as by what it has expressed.*"

In *Charlestown & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597, 35 S. C. R. 715, the Court said:

"When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition and a state law is not declared to be valid because it attempts to go farther than Congress has seen fit to."

See also *C. R. I. & P. Ry. Co.* v. *Hardwick Farmers Elevator Co.*, 226 U. S. 426, 33 S. C. R. 174; *Southern Ry. Co.* v. *Railroad Commission*, 236 U. S. 439, 35 S. C. R. 304.

The Federal Act provides that the interstate employer

"shall be liable *in damages to any person suffering injury* while he is employed by such carrier in such commerce, or in case of the death of such employe, *to his or her personal representative* for the benefit of the surviving widow or husband or children of such employe, etc."

BY THIS ACT CONGRESS HAS LEGISLATED UPON THE AMOUNT OF RECOVERY.

In *Gulf, Colo. & S. F. Ry. Co.* v. *McGinnis*, 228 U. S. 173, 33 S. C. R. 426, the state court gave judgment to a self-supporting child for damages for the death of a parent, the child suffering no pecuniary loss. This recovery would have been proper under the state law. The recovery was held to be improper under the Federal act. The Court said:

> "The statutory action of an administrator is not for the equal benefit of each of the surviving relatives for whose benefit the suit is brought. Though the judgment may be for a gross amount, the interest of each beneficiary must be measured by his or her individual pecuniary loss. That apportionment is for the jury to determine. This will, of course, exclude any recovery in behalf of such as show no pecuniary loss."

In *No. Car Ry. Co.* v. *Zachary*, 34 S. C. R. 305, 232 U. S. 248, the Court, in holding that by the Federal Employers' Liability Act Congress had legislated upon the amount of recovery, said:

> "It is not disputed that if the provisions of the Federal act had been applied, the result of the action might have been different. To mention only one matter, there was neither averment in the pleadings nor evidence at the trial that the deceased left a widow, child, parent or dependent next of kin. Persons thus related to deceased are the respective beneficiaries of the action prescribed by the act of Congress and the damages are to be based upon the pecuniary loss sustained by the beneficiary, (citing cases). *The state law seems not to recognize this limitation upon the measure of recovery.* Certainly the damages in the present case were assessed without regard to it."

In *New York Central R. R. Co.* v. *Tonsellito*, 244 U. S. 360, 37 S. C. R. 620, decided by this Court June 4, 1917, an action was brought by the father to recover his own damages for loss of services of his minor son. Both the carrier and the son were engaged in interstate commerce. It was held that because the Federal Employers' Liability Act did not expressly give this right of action, but on the contrary was silent with respect thereto, no such cause of action existed. The Court said:

> "CONGRESS HAVING DECLARED WHEN, HOW FAR AND TO WHOM CARRIERS SHALL BE LIABLE ON ACCOUNT OF ACCIDENTS IN THE SPECIFIED CLASS, SUCH LIABILITY CAN NEITHER BE EXTENDED NOR ABRIDGED BY COMMON OR STATUTORY LAWS OF THE STATE."

BY THIS ACT CONGRESS LEGISLATED AS TO THE DISTRIBUTION OF THE RECOVERY AND THE PARTIES ENTITLED THERETO.

Gulf, Colo. & S. F. v. *McGinnis*, supra.

In *Michigan Central Ry. Co.* v. *Vreeland*, 227 U. S. 59, 33 S. C. R. 192, the Court held that a cause of action under the Federal act did not survive, (this was before the amendment of 1910), in spite of a state statute providing for the survival of all causes of action. The Court said:

> "The statutes of many of the states expressly provide for the survival of the right of action which the injured person might have prosecuted if he had survived, but unless this Federal statute which declares the liability here asserted provides that the right of atcion shall survive the death of the injured employe, *it does not pass to his representative, notwithstanding state legislation.* The question of survival is not one of procedure but one which depends on the substance of the action."

In *Taylor* v. *Taylor*, 232 U. S. 363, 34 S. C. R. 350, the Court held, after a thorough review of the authorities, that

a recovery in a death case under the Federal act, went to the widow, in spite of the laws of descent of the state of New York, which provided for the distribution of personal property in part to the widow, in part to the parents.

In the case of *Mondou* v. *N. Y. N. H. & H. R. R.*, 223 U. S., page 1, 32 S. C. R. 169, the Court said:

> "The distribution of damages recoverable under the act of April 22, 1908, from an interstate railway carrier for the death of an employe while engaged in interstate commerce is governed by the provisions of that statute, which necessarily supersede any applicable state legislation."

> "CONGRESS HAVING DECLARED WHEN, HOW FAR AND TO WHOM CARRIERS SHALL BE LIABLE ON ACCOUNT OF ACCIDENTS IN THE SPECIFIED CLASS, SUCH LIABILITY CAN NEITHER BE EXTENDED NOR ABRIDGED BY COMMON OR STATUTORY LAWS OF THE STATE."

N. Y. Central R. R. Co. v. *Tonsellito*, supra.

Holloway's cause of action was based wholly and exclusively on the Federal Employers' Liability Act. That act provides that in the case at bar the defendant was liable to *Holloway* for *his* damages. This is all the Federal act provides for, thereby excluding any further payment to anybody. These damages were fixed by agreement of the parties at $6,500. The attorney's lien statute of Minnesota has been construed by the court of that state to the effect that if a settlement is made by the parties without the consent of the attorney, the attorney is entitled to recover from the defendant and the defendant must pay to the attorney the amount of his compensation. In other words, while the statute in terms is a lien statute, it has in reality been construed into a statute making the defend-

ant personally liable for this compensation, and this additional sum must be paid *on account of the injury to the employe in interstate commerce.* See *Johnson* v. *Great Northern,* 128 Minn. 365, supra; *Davis* v. *Great Northern,* 128 Minn. 354, supra.

We have, therefore, this result: that while the Federal act makes the defendant liable *to the injured man* for the *damages sustained* (in this case $6,500) and goes no further in terms, which means that Congress "does not intend that there shall be any further legislation to act upon the subject matter," (*Prigg* v. *Commonwealth,* supra), the statute of Minnesota prescribes that in addition to that $6,500 the defendant under certain circumstances which exist in this case, shall pay *upon the same cause of action* an additional sum of over $2,300. This is clearly beyond the power of the state.

View the statute as strictly a lien statute and not one imposing a personal obligation upon the defendant to pay money. Congress has legislated upon the distribution of the fund, the parties entitled to the recovery. Under the terms of the Federal act, the party entitled to the money is *the man injured.* The statute of Minnesota declares that under certain circumstances, (to-wit: in the event suit is brought), the fund shall not be distributed in the way provided for by the Federal act but in a different way. The moment suit is brought, because of the statute of Minnesota, a part of the damages immediately vests in the attorney, the remainder in the parties mentioned in the Federal act. This is clearly legislating as to the distribution of the fund, which the Minnesota legislature has no power to do. The only way a lien can be created on the cause of action arising under the Federal act is for Congress to

create it. Its failure to so provide is an express enactment that no such lien exists.

The case of *Charlestown Ry. Co.* v. *Varnville Furniture Co.*, 35 S. C. R. 715, 237 U. S. 597, is decisive of the question. In this case it was held that the state statute imposing a penalty upon a railway company for failure to pay within the prescribed time a claim for damages to a freight shipment moving in interstate commerce was invalid because Congress had legislated upon the subject matter and state regulations were inoperative.

This is not a matter merely of local procedure but one of substantive right. It is true that since jurisdiction over a cause of action under the Federal act is given to the state courts, the state courts may enforce that act with their own machinery and by their own procedure. Therefore, a state court may try a case arising under the Federal act with a jury of ten. *M. & St. L. Ry. Co.* v. *Bombolis*, 241 U. S. 211, 36 S. C. R. 595, and the court may impose a moderate sum as a part of the taxable costs, *M. K. & T.* v. *Harris*, 234 U. S. 412, 34 S. C. R. 790, but there is a vast difference between questions of procedure which, of course, may differ in different tribunals and matters of substance. It was held in *Central Vermont Ry. Co.* v. *White*, 238 U. S. 507, 35 S. C. R. 865, that under the Federal act, the plaintiff was not, as a part of his case, required to prove himself free from contributory negligence, in spite of the fact that in the state, in the courts of which the case was tried, the rule was that plaintiff must show as a part of his case freedom from contributory negligence. It was held that the question of the burden of proof was a matter of substance and not one of procedure.

Similarly, it is a matter of substance and not of procedure to impose a penalty for a failure to pay damages as prescribed by an act of Congress. *Charlestown & No. Car Ry. Co.* v. *Varnville Furniture Co.*, supra.

> "The question of survival is not one of procedure." *Mich. Central* v. *Vreeland*, supra.

By committing the jurisdiction over cases within the act to the state courts, Congress has said to these courts that they may enforce the action arising under that act under their own procedure and in their own way, provided that they do enforce the rights given by that act and no more, no less. This, however, is an entirely different matter from permitting the state to either add to or subtract from the Federal act any substantial right. The state cannot add an additional sum to the recovery any more than it can limit the recovery.

In *Chicago, Rock Island & Pacific Railway Co.* v. *Devine*, 239 U. S. 52, 36 S. C. R. 27, this Court held that a recovery in a death case under the Federal Employers' Liability Act could not be and was not limited by the Illinois statute limiting the damages for death by wrongful act in that state to $10,000. This holding may not be precisely clear from the reported opinion of this court, but the point is specically decided by the opinion of the Supreme Court of Illinois in the same case, 266 Illinois, 248; 107 N. E. 595, which was affirmed *in toto* by this Court.

This court has also expressly held that the state cannot add to the Federal act by giving a right of recovery where there is no negligence in a case where both employer and

employe are engaged in interstate commerce, where the Federal act gives no such recovery.

Staley v. *Illinois Central*, supra.

New York Central v. *Winfield*, supra.

Substantially this same argument, together with the same authorities, was presented to the Supreme Court of Minnesota on this question. The Minnesota Court did not, however, have the benefit of the Winfield and Tonsellito cases, which had not at that time been reported. Will the Court please observe how the Minnesota Supreme Court disposes of the matter, pages 63 and 64 of the record:

> "The argument of counsel is ingenious, but not convincing. Congress has not attempted to regulate the dealings between the railroad employe, injured in interstate commerce, and his attorney. No doubt that body from the first inception of this sort of legislation realized full well that the railroads, as a rule, would not voluntarily pay adequate compensation to the injured employe or his beneficiaries, but that usually such compensation could be obtained only at the end of a bitterly contested lawsuit requiring an attorney's services, or through a series of negotiations carried on by an attorney. It could not have been contemplated that this work of an attorney should be a gratuity. Neither is it supposable that the members of Congress are unaware of the regrettable fact that among attorneys there has long existed keen competition for this sort of litigation and frequent overreaching in bargaining for an unconscionable fee. Notwithstanding all this, we find no provision in the act in any manner bearing upon the relation or compensation of an attorney who is employed to enforce the liability thereby created. The fee going to the attorney cannot be considered a burden upon the carrier, or indirectly upon interstate commerce. It comes out of the sum which by the settlement or the judgment in the action is awarded the client. The

> person entitled to compensation under the Federal Employers' Liability Act has the right to enforce his cause of action in the state courts, and when he so elects we see no reason why, in the absence of federal legislation indicating to the contrary, the attorney may not call upon the court to protect his rights under the lien given by the state statute upon the cause of action."

Without referring to the extremely unjust and entirely uncalled for statement that railroads do not and do not attempt to do justice to their employes, the fallacy of the Court's reasoning is at once apparent. This case does not involve a question of a disputed bill between attorney and *client*, but the imposition of a lien in favor of a *third party* upon a cause of action created by the Federal Employers' Liability Act. It is probably true that as between attorney and client Congress has not legislated as to the attorney's fee, and, therefore, the field is open to state legislation, even though the subject of the litigation may arise under the act of Congress, because as between attorney and client the matter is one of private contract and does not arise under the act. But Congress has legislated as to "when, how far and to whom carriers shall be liable," (*New York Central* v. *Tonsellito*, supra) and is silent as to any requirement that under any circumstances shall the carrier pay to the attorney any portion of the damages sustained or any sum in addition to such damages.

In the use of the words "in the absence of Federal legislation indicating to the contrary," the Minnesota Supreme Court overlooks the holdings of this court already referred to, particularly the case of *Prigg* v. *Commonwealth*, supra, where this Court said:

> "The will of Congress upon the whole subject is as clearly established *by what it has not declared* as by what it has expressed."

This language was quoted with approval in the case of *New York Central* v. *Winfield*, supra.

The Federal Employers' Liability Act which does not contain any provision for an attorney's lien upon the cause of action is "Federal legislation indicating to the contrary." The very argument which the Minnesota Supreme Court makes *in support of* its contention, viz., that "we find no provision in the act in any manner bearing upon the relation or compensation of an attorney who is employed to enforce the liability thereby created" is conclusive *against* the conclusion reached.

The statement of the Court that the attorney's fee under the statute "comes out of the sum which by settlement * * * is awarded to the client" is rather ludicrous in view of the judgment of which we complain, requiring plaintiff in error to pay some $2,300 in addition to the $6,500, "the sum which by settlement * * * is awarded to the client." The proof of the pudding is the eating, and it will be a difficult proposition to convince the plaintiff in error that he does not have to pay a greater sum on account of the injury to Holloway in interstate commerce because of this statute (if it be held valid) than he would have to pay if the statute were not in existance. To say that this statute does not increase the carrier's liability for an injury to an employe in interstate commerce is to shut one's eyes to its obvious effect.

In presenting the matter to the Supreme Court of Minnesota, the defendant in error made the following suggestions which will, doubtless, again be urged:

1. That the $6,500 paid by the plaintiff in error to Holloway did not represent the full amount of Holloway's damages, but only his damages under the Federal Act, less

his attorney's fees; that when plaintiff in error settled this case with Holloway direct, he did so with full knowledge of the law of Minnesota under which he was required to withhold the amount of the lien of defendant in error, and that it would be presumed that plaintiff in error obeyed the law.

The answer to this suggestion is perfectly obvious. Under the authorities cited, any State statute which attempts to require the carrier to withhold any portion of the amount the Federal Employers' Liability Act says it must pay, or which attempts to require that a portion thereof be paid to some one else, is absolutely void. Such a law is contrary to the express provisions of the Federal Employers' Liability Act.

2. Defendant in error attempted to distinguish the case at bar from Varnville Furniture case, supra, by contending that in that case the state statute imposed a penalty for failure to comply with the act to regulate commerce, while such is not the case here, it not being a penalty for failure to comply with an act of Congress. But this case presents a more striking example of conflict between state and federal enactments, than did the Varnville Furniture case. The Federal Employers' Liability Act required the plaintiff in error to pay Holloway his damages. This, plaintiff in error did. He paid Holloway exactly what the act of Congress required. As a penalty for compliance with that act, he is required to pay an additional sum. On principle, there is no distinction between imposing a penalty by a state for failure to comply with the federal statute, and imposing a penalty for complying with the statute, except the latter is more clearly invalid. In the one

case, the state statute merely goes further than the federal statute, while in the other it directly opposes it. But both are equally invalid.

Can it for a moment be supposed that if the Minnesota statute provided that the carrier should pay not only all damages required by the Federal Employers' Liability Act but also all atttorneys' fees, it could be held valid? The only distinction between the supposed case and this one is that the attorney's fees under the Minnesota statute now under consideration are to be paid only in certain cases. This is, of course, a distinction without a difference.

The Minnesota statute puts an additional burden on interstate commerce and attempts to add a substantial right to the Federal Employers' Liability Act and impose an additional burden on the carrier. It is void and ineffectual as to a cause of action arising under such act.

The judgment is erroneous and should be reversed.

Respectfully submitted,

McNEIL V. SEYMOUR,
EDWARD S. STRINGER,
800-805 Germania Life Building,
Saint Paul, Minnesota,
Counsel for Plaintiff in Error.

APPENDIX.

The following is the statute of the state of Minnesota which we attack in this case as being invalid because repugnant to the Constitution and the laws of the United States:

GENERAL STATUTES OF MINNESOTA FOR THE YEAR 1913.

"4955. LIEN.—An attorney has a lien for his compensation, whether the agreement therefor be express or implied:

1. Upon the papers of his client coming into his possession in the course of his employment.

2. Upon money in his hands belonging to his client.

3. Upon the cause of action from the time of the service of the summons therein.

4. Upon money in the hands of the adverse party to the action or proceeding in which the attorney was employed, from the time such party is given notice of the lien.

5. Upon a judgment, to the extent of the costs included therein; and, if there be a special agreement as to compensation, the lien shall extend to the amount thereof from the time of giving notice of his claim to the judgment debtor. But this lien is subordinate to the rights existing between the parties to the action or proceeding." (Section 2288 of Revised Laws of Minnesota for 1905.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 735.

JACOB M. DICKINSON, AS RECEIVER OF THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

GEORGE C. STILES, DEFENDANT IN ERROR.

MOTION ~~TO DISMISS~~ OR AFFIRM BRIEF FOR DEFENDANT IN ERROR.

Now comes the defendant in error, George C. Stiles, by his attorney, George H. Lamar, and moves the court to dismiss the writ of error, or affirm the final judgment of the Supreme Court of Minnesota in the above-entitled cause, and to impose damages under Rule 23 of this court and to at least place the case on the summary docket:

(1) Because the only semblance of a Federal question consists in the assertion of an immunity from the effects of a State statute of general application under a certain construction sought to be placed upon the Federal Employers' Lia-

bility Act; whereas the judgment sought to be reviewed herein *by writ of error* was rendered subsequent to the amendment of section 237 of the Judicial Code by the act of Congress of September 6, 1916, and under which amendment a review by this court *could only be had by writ of certiorari;*

(2) Because proper foundation was not laid in the trial court whereon to raise such Federal question, there were non-Federal questions on which the judgment might have been sustained, and there is nothing in the final judgment sought to be reviewed which shows that such final judgment involved a denial of any Federal right;

(3) Because there is presented no Federal question on which there was any error committed; and

(4) Because manifestly the question presented on writ of error is frivolous and without merit.

GEORGE H. LAMAR,
Counsel for Defendant in Error.

To Messrs. McNeil V. Seymour and Edward S. Stringer, Attorneys for Jacob M. Dickinson as Receiver of the Chicago, Rock Island and Pacific Railroad Company, Plaintiff in Error.

GENTLEMEN: Please take notice that on Monday, the 4th day of March, 1918, on the opening of the court on that day, or as soon thereafter as the matter can be heard, I will move the Supreme Court of the United States, in the court-room thereof, in the city of Washington, District of Columbia, that the foregoing motion be granted.

Dated at Washington, D. C., this 7 day of February, A. D. 1918.

George H. Lamar
~~GEORGE H. LAMAR,~~
Counsel for Defendant in Error.

Service of the above notice and receipt of copy thereof, together with copies of the foregoing motion and brief in support thereof, is hereby admitted in the city of Minneapolis, in the State of Minnesota, this 7 day of February, A. D. 1918.

McNeil V. Seymour
Edward S. Stringer,
Counsel for Jacob M. Dickinson as Receiver for the Chicago, Rock Island and Pacific Railway Company, Plaintiff in Error.

BRIEF FOR DEFENDANT IN ERROR IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

The case is here on writ of error to the Supreme Court of Minnesota to review its judgment (R., 74) of September 12, 1917, affirming the judgment (R., 68) of the trial court, entered August 2, 1917, for $2,356.75, upon the verdict (R., 52) of the jury in favor of the defendant in error.

The verdict (R., 52) was for $2,166.67, besides interest and costs. This is just 33⅓ per cent of $6,500, the amount of the settlement made by the plaintiff in error with the client of the defendant in error, of his cause of action, brought by the latter as attorney against the former as defendant, the settlement having been effected with the client direct and after notice to the plaintiff in error of the contract right of the defendant in error to an amount equal to one-third of the recovery, whether by compromise or otherwise.

The plaintiff in error relies, for jurisdiction of this court to review by *writ of error*, upon the assertions that in this cause there has been "drawn in question the *validity*" of subsection (3) of section 4955 of the State statutes of 1913 on the ground of repugnancy to the commerce clause of the Constitution of the United States and the Federal Employers' Liability Act, and that the entry of the judgment of September 12, 1917, necessarily involved a decision in favor of the validity of such State statute and against the alleged claim of the plaintiff in error to the contrary.

Said section 4955 is identical with section 2288 of the codification of 1905, and is set forth in full on page 27 of brief for plaintiff in error.

The pertinent portions of this State statute, of general application, read as follows:

"SEC. 4955. *Lien.*—*An attorney has a lien for his compensation, whether the agreement therefor be express or implied;* * * *

"(3) *Upon the cause of action from the time of the service of the summons therein.*

"(4) *Upon money in the hands of the adverse party to the action or proceeding in which the attorney was employed, from the time such party is given notice of the lien.*" (Italics supplied.)

In line with the abolition by Minnesota of the common-law distinctions between forms of actions, an attorney may assert his rights, even under subsection (3) of this statute, by separate and independent action as well as by complaint in intervention.

Davis *vs.* G. N. Ry. Co., 128 Minn., 354.

As construed by the Supreme Court of the State of Minnesota, it is not necessary under subsection (3) to give actual notice to the opposite party of an attorney's claim.

Northrop *vs.* Hayward, 102 Minn., 307.

In the case at bar, however, the express notice required by subparagraph (4) was given; and the defendant in error proceeded against the plaintiff in error by "complaint in intervention" (R., 8-10), averring contract of employment by, and services as counsel for, the plaintiff in the original action, the compromise of the action for $6,500 by the plaintiff in error with notice from the defendant in error, the dissipation by the client of the funds paid him under such compromise—all under circumstances of bad faith on the part of the plaintiff in error—and charging that the plaintiff in error had cheated and defrauded the defendant in error and that the latter was also entitled to relief under his attorney's lien.

Case Tried on Non-Federal Issues.

Neither by demurrer nor by any other form of pleading did plaintiff in error challenge the right of defendant to recover by reason of any Federal law.

On the contrary, the pleading in defense to the intervening petition was confined by the plaintiff in error to his answer (R., 10-12) on the merits and by which he denied that any valid contract was made between the plaintiff to the original action and the defendant in error, and averred that any possible form of contract that was made was procured by solicitation through a non-professional agent of the defendant in error, and that such contract was champertous under the law of the contract.

It was upon purely State-law issue thus raised that the case was tried, and the charge (R., 48-52) was made to the jury on the theory that no Federal question whatsoever was involved.

The evidence adduced on behalf of plaintiff in error at the trial is not set out in the record, but it affirmatively appears by the bill of exceptions (R., 47) that the testimony on behalf of the plaintiff in error was confined

> "solely to the issue of the mental capacity of the plaintiff and the issue whether the contract of employment referred to in the complaint in intervention was champertous."

In addition to the general verdict (R., 52), the jury brought in special verdict in response to the special questions submitted by the court; and by which it was found (R., 52) that the client, Holloway, was mentally competent to make the contract, and that his contract with defendant in error was not void for champerty.

No Basis in Pleading or Evidence for Federal Question.

The first suggestion of defense on the ground of any Federal question came from the plaintiff in error in connection with his motion (R., 47) for an instructed verdict wherein it was asserted, in direct opposition to the averments of his answer to the original complaint (R., 5), that the original cause of action was based upon the "so-called Federal Employers' Liability Act"; and the motion was overruled, and ultimately a judgment was entered upon the verdict, without any evidence showing whether the injury to Holloway on the siding at Molone, Illinois, occurred in intra or interstate commerce.

Evidence on this point was irrelevant to any issue raised in the controversy, as between the defendant in error and the plaintiff in error.

The plaintiff in error is not unmindful of his predicament in this regard, and on page 3 of his brief suggests that this essential fact may be taken as proven as against the defendant in error by the averments made by the client of defendant in error in his original complaint, and in the face of the denial by the plaintiff in error of such averment as contained in his answer thereto.

The stipulation (R., 13), to which reference is so made by plaintiff in error, for the introduction in evidence of the original complaint, embraces the *answer* as well as the complaint.

Pleadings in Original Action.

The complaint (R., 1-4) of Holloway, the client, makes no reference to the Federal Employers' Liability Act. It does aver that Holloway was an employee in the capacity of a switchman in the yards of the company at Molone, Illinois, and that, at the time of the injury through the negligence of the defendant, "both the plaintiff and the defendant were

actually engaged and engaging in interstate commerce"; but, as if preparing for a failure to prove the last-mentioned averment, the complaint also *contains averments of defective machinery and due care.*

By the answer (R., 4-6) of the plaintiff in error *these averments were denied "in whole and in part,"* except that it was admitted that the plaintiff had been an employee at Molone, Illinois, and had been injured to an extent unknown.

It was in this answer averred, by way of defense, that the injury had been caused solely by plaintiff's own neglect, that he had assumed the risk; and that the rights of the plaintiff against the defendant *were governed and controlled exclusively by the State Employers' Liability Act of Illinois,* which was specially pleaded.

Proceedings After Verdict.

The Federal question asserted by motion to instruct was sought to be reserved by exception to the order of the court (R., 48) overruling the motion.

It was subsequently renewed in the trial court as one of the numerous grounds for the alternative motion (R., 54-55) on behalf of the plaintiff in error for a new trial or a judgment *non obstante veredicto;* and, again, by one of the numerous assignments of error (R., 60), on appeal to the Supreme Court of the State of Minnesota from the *interlocutory* order overruling the same.

By its opinion (R., 63-66) on appeal from said interlocutory order, the Supreme Court of Minnesota pointed out (R., 64) the fact that notice was given agreeably to subsection (4) of the State statute, and affirmed the action taken by the trial court on the various State questions presented, and held to be conclusive the verdict of the jury on the State law issues presented to it.

When the case went back to the trial court no further action was taken therein looking toward the submission of

any proof whereon to show that the facts brought the case within the purview of the Federal Employers' Liability Act, and nothing further was done by the plaintiff in error to assert the alleged Federal question in the trial court before judgment was entered on the verdict.

An appeal was again taken to the Supreme Court of the State of Minnesota by the plaintiff in error from this judgment (R., 68). In the assignment of errors (R., 69-70), the alleged Federal question was again asserted.

The Supreme Court of Minnesota rendered no formal opinion on this appeal, but affirmed *"in all things"* the judgment below in general terms *per curiam* (R., 73), filed August 23, 1917.

It was agreeably to this action that the final judgment of September 12, 1917 (R., 74), was entered.

Whereupon the *writ of error* in question was sued out as the means chosen by which to review the judgment.

ARGUMENT.

I.

Dismissal for Lack of Jurisdiction.

The jurisdiction of this court to review the judgments of State courts is conferred by section 237 of the Judicial Code.

The first ground for the motion to dismiss the writ of error is based upon the idea that the judgment, if open to review here at all, cannot be reviewed upon a writ of error, but only upon a writ of *certiorari*.

At the outset, attention is called to the construction of the statute by this court in its opinion delivered by Mr. Justice Van Devanter November 26, 1917, in the case of P. & R. Coal & Iron Company *vs.* Gilbert:

> "Under section 237 of the Judicial Code, as amended September 6, 1916, c. 448, 39 Stat., 726, a

> final judgment or decree of a State court of last resort in a suit 'where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; *or where is drawn in question the validity of a statute of,* or an authority exercised under any State, *on the ground of their being repugnant to the Constitution,* treaties, *or laws of the United States,* and the decision is in favor of their validity,' may be reviewed in this court upon writ of error; but, if the suit be one where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity; or where any title, *right, privilege,* or *immunity* is claimed under the constitution, or any treaty *or statute* of, or commission held or authority exercised under the *United States,* and the *decision is either* in favor of or *against* the title, *right, privilege,* or *immunity especially set up or claimed,* by either party, under such Constitution, treaty, statute, commission, or authority; the *judgment* or decree *can be reviewed in this court only upon a writ of certiorari.*" (Italics supplied.)

Neither by his assignment of errors (R., 77-8) nor by the petition (R., 79) of the plaintiff in error for the writ of error is it claimed that there has been drawn in question in the case "an authority exercised under any State" or that there has been "drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity."

Instead of asserting by petition for a writ of *certiorari* his claim to immunity from the effects of the State law of general application by reason of the alleged effects of the Federal Employers' Liability Act, the plaintiff in error, in his petition for writ of error, relies for jurisdiction by this court upon the assertion that

> "in said suit was drawn in question the validity of a statute of the State of Minnesota, * * * on the ground of its being repugnant to the Constitution and the laws of the United States, and the decision of the Supreme Court of Minesota was in favor of the validity of said statute, contrary to the claim of your petitioner in this respect."

The assignments of error in this court (R., 77-8), however, reveal the fact that the attack is not upon the *"validity"* of the State statute, as is necessary to sustain jurisdiction by this court on writ of error.

Though in the form of an attack on the validity of the State statute, each of these assignments (R., 77-8) expressly contain the qualifying clause, *"so far as the same purports to create or impose an attorney's lien upon a cause of action arising under the Federal Employers' Liability Act."*

State Statute.

The State statute in question (copied in conjunction with balance of the section on page 27 of brief of plaintiff in error) has been in full force and effect in Minnesota since prior to the enactment of the Federal Employers' Liability Act and could not, therefore, have been intended to conflict therewith. It does not purport to create or impose an attorney's lien upon any particular character of cause of action, and contains no language indicating the slightest purpose on the part of the legislative branch of the State government to infringe upon the realm of national legislation.

On the contrary, the provisions of the State statute come strictly within the character of State legislation on the subject of attorney's liens, which this court has heretofore pronounced to be both proper and binding upon the Federal courts of the United States.

C. R. R. Banking Co. *vs.* Pettus *et al.*, 113 U. S., 116, 127.

This statute in its present form, as also in its pre-existing state, has been repeatedly construed by the highest court in the State of Minnesota.

Cromley *vs.* Le Duc, 21 Minn., 412.
Farmer *vs.* Stillwater Co., 108 Minn., 41.
Northrop *vs.* Hayward, 102 Minn., 307.
Disman *vs.* Butler Bros., 114 Minn., 362.
Disman *vs.* Butler Bros., 118 Minn., 198.
Davis *vs.* G. N. Ry. Co., 128 Minn., 354.

From the long line of decisions by the Supreme Court of Minnesota, not the slightest question remains with regard to the constitutionality of this State statute of general application.

Without here going into the merits of the proposition that no attorneys' lien can be asserted under a State statute in a case brought under the Federal Employers' Liability Act, it seems enough to say that in essence the theory on which the proposition is based does not lead to the point of the State law being *invalid* as repugnant to the Constitution and laws of the United States; but only *inapplicable* to the particular class of cases, as to which, under the Federal statute, the party affected might crave an "immunity."

It was in this sense that the alleged Federal question was first raised in the trial court, where the motion (R., 47) was made by the plaintiff in error to instruct the jury to bring in a verdict in his favor, among other things, on the

> "ground that the plaintiff's cause of action, being a cause of action arising under the so-called Federal Employers' Liability Act, the statute of the State of Minnesota, *in so far* as it purports or attempts to give an attorney a lien thereon, *is ineffectual* in that the cause of action arises under the act of Congress," etc. (Italics supplied.)

The same basic idea is likewise expressed by the plaintiff in error in his alternative motion for a new trial or judgment

non obstante veredicto (R., 55), and in his first assignment of errors (R., 60) filed in the trial court. In the former there occurs the words, "inoperative and ineffectual," and in the latter the word "inoperative" is used.

It was this theory of the plaintiff on which the Supreme Court of Minnesota commented in its opinion (R., 63-4) on the appeal from the *interlocutory order* denying said alternative motion.

And this decision by the Supreme Court of Minnesota, on the theory of immunity, is all we have from either court below on the alleged Federal question.

It was subsequent to this that, in the absence of proof showing that the facts brought the original action within the purview of the Federal statute, the trial court entered its judgment and the State Supreme Court, without opinion, affirmed this judgment.

The plaintiff in error, by his assignments of errors, asserts that each of the judgments below necessarily involved decisions adverse to him on the alleged Federal question.

If he means by this to assert that there was ever drawn in question before the trial court the *validity* of the State statute as being repugnant to the Constitution, treaties or laws of the United States, or that it was necessary to the rendition of the final judgment here sought to be reviewed on writ of error that a decision should have been rendered upon such matter by each of the courts below, the assertion is absolutely untenable, as may be demonstrated by an inspection of the pertinent portions of the record.

By the most liberal construction of the record in search for a Federal question at all, there could at best be found a claim of right, privilege or immunity under the Federal statute, the denial of which could alone be reviewed by this court on *certiorari*.

And for this reason, if for none other, the writ of error should be dismissed for lack of jurisdiction by this court.

P. & R. Coal & Iron Co. *vs.* Gilbert (*supra*).

II.

No Federal Question Properly Raised, Non-Federal Questions Involved on Which to Support Judgment.

By reference to the terms of the State statute above, it will be observed that two distinct grounds for relief to the defendant in error were conferred thereby, namely:

(1) Subsection (3) gave a lien on the cause of action; and

(2) Subsection (4) gave a lien "upon money in the hands of the adverse party" "from the time such party is given notice of his lien."

By his complaint in intervention the defendant in error made averments on which to obtain relief under either provision.

And also upon the charge that "the settlement, release, and payment were so obtained and made by the defendant (plaintiff in error) in bad faith and with the intent and purpose to thereby cheat and defraud this intervener out of his said fees and compensation in the action."

By his defense on the merits, and without any reference in his pleading to the Federal statute, the plaintiff in error invoked the principles of the State law, and entered into the trial of the case upon the purely non-Federal issues raised, just as though the proceeding had been begun by independent action and there was no possible Federal question involved.

A careful perusal of the record will show that not only did the plaintiff in error in his answer to the original complaint deny the application of the Federal Employers' Liability Act, and fail to secure any proof whereon to show that the injury was incurred in interstate commerce, but in his motion to instruct the jury (R., 47) confined his claim of immunity on account of the Federal statute to the attorney's

lien on the "*cause of action,*" and asserted no claim of immunity from the cause of action growing out of the violation by the plaintiff in error of the right of the defendant in error to a lien upon the money in the hands of the plaintiff in error from the time of notice or otherwise.

Thereafter, both by his alternative motion (R., 54-57) for a new trial or judgment *non obstante veredicto,* and assignment of errors (R., 60-62) on appeal from the interlocutory order overruling the motion, the plaintiff in error, coupled with the assertion of this alleged Federal question the non-Federal questions which had resulted from the trial of the case on purely State law issues, and the sustaining of some of which was essential to overcome the right of action at least under subsection (4), so left open as a non-Federal question.

In sustaining the court below, the Supreme Court of Minnesota, in its opinion (R., 64), called specific attention to the presence of the facts bringing the case within subsection (4), the court saying:

> "In the instant case defendant had full *notice* of the attorney's rights before the payment of the money on the settlement made with the client."

In the Northrup case (*supra*), the Supreme Court of Minnesota specifically holds that under subsection (3) "*no notice of the attorney's claim is required to be given the opposite party.*"

Thus, while the court, in passing on the appeal from the interlocutory order, overlooked the lack of proof on which to base the same and discussed the claim of immunity from the "lien against the cause of action," recognized the rights of the defendant in error not covered by the specification of the alleged Federal question, and the action of the court below, taken without discussion of any except State questions, was affirmed.

As suggested in the argument of the preceding point, it

was subsequent to this opinion and in the continued absence of proof showing the application of the Federal Employers' Liability Act and without further questions being raised in the trial court, that judgment was entered in the trial court, and this judgment, without opinion, was *"in all things affirmed"* by the judgment sought to be reviewed by writ of error.

Wherefore it is respectfully suggested that, in addition to the utter lack of Federal question reviewable under the statute *on writ of error*, the writ should be dismissed for the further reasons:

(*a*) There is nothing in the pleadings or evidence whereon to show that the injury was sustained in interstate commerce or that the original cause of action in fact came within the purview of the Federal Employers' Liability Act;

(*b*) There was one or more non-Federal questions on which the judgment below was or might have been based; and

(*c*) There is nothing in the judgment on which the writ of error is based by which to conclude that the case was disposed of upon a Federal question.

Cuyahoga River Power Co. *vs.* N. R. Co., 244 U. S., 300.

III.

Alleged Federal Question Without Merit.

Anticipating, as we do, that the writ of error will be dismissed for want of jurisdiction, it is deemed unnecessary to enter into a detailed discussion of the merits of a question which, according to our view, is a mere moot question as presented on the record in this case.

It is respectfully suggested, however, that this court has heretofore indicated that the extreme views, so fully presented by opposing counsel in their brief, will not deter this court in its effort to make a fair and practical application of the Federal Statutes to the normal and orderly administration of justice through the instrumentality of State courts.

M., K. and T. R. Co. *vs.* Harris, 234 U. S., 412.
L. & N. R. Co. *vs.* Stewart, 241 U. S., 261.
Minneapolis & St. L. R. Co. *vs.* Bombolis, 241 U. S., 211.

IV.

Request for Damages under Rule 23.

By a perusal of the record, it must be manifest to the court that the effort to raise a Federal question at the conclusion of the trial upon non-Federal issues was an afterthought; and, even then, it was in essence based upon a theory other than that on which the case could alone be reviewed by this court on writ of error.

The intention of the Act of 1916 was to relieve this court of cases of this class, except where review was sought by *certiorari,* and this court had, on consideration of a petition, concluded to hear the case on *certiorari.* By proceeding under the form of writ of error, plaintiff in error has his case upon the docket in form as of right, and not by action of this court such as required on *certiorari* under the rules.

Indeed the time prescribed by the statute for proceeding by way of *certiorari* has expired; and the defendant in error, in due course, would have to wait indefinitely for this case to be reached and disposed of in its order.

Not only so, but, as hereinbefore set forth, no Federal question was properly raised.

This case would seem to come clearly within the provisions of Rule 23 and call for an imposition of the usual damages for suing out frivolous writs of error.

So. Rwy. Co. *vs.* Gadd, 233 U. S., 572.

GEORGE H. LAMAR,
Counsel for Defendant in Error.

26202

United States Supreme Court.

OCTOBER TERM, 1917.

735

JACOB M. DICKINSON, as Receiver of the CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,

Plaintiff in Error,

vs.

GEORGE C. STILES,

Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

MCNEIL V. SEYMOUR,
EDWARD S. STRINGER,
Counsel for Plaintiff in Error,
St. Paul, Minnesota.

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Plaintiff in Error,

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Defendant in Error.

REPLY BRIEF OF PLAINTIFF IN ERROR IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

We shall discuss the points raised by the defendant in error under the headings contained in his brief.

I. "DISMISSAL FOR LACK OF JURISDICTION."

Section 237 of the Judicial Code as amended by the Act of Congress of September 6th, 1916, reads as follows:

"Sec. 237. A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is against their validity; or *where is drawn in question the validity of a statute of*, or an authority exercised under *any state, on the ground of their being repugnant to the Constitution*, treaties, *or laws of the United States*, and the decision is in favor of their validity, may be re-examined and reversed or affirmed in the Supreme Court *upon a writ of error*. The writ shall have the same effect as if the judgment or decree complained of had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its discretion, award execution or remand the same to the court from which it was removed by the writ.

"It shall be competent for the Supreme Court, *by certiorari* or otherwise, to require that there be certified to it for review and determination with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had, where is drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision is in favor of their validity; or where is drawn in question the validity of a statute of, or an authority exercised under any state, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision is against their validity; or *where any title, right, privilege, or immunity is claimed under the Constitution*, or any treaty or *statute of*, or commission held or authority exercised *under the United States*, and the decision is either in favor of or against the title, right, privilege or immunity especially set up or claimed, by either party, under such Constitution treaty, statute, commission, or authority."

Reduced to its lowest terms, the position of defendant in error is that this is a case where there is claimed an *immunity* under the *Constitution and statutes of the United States,* and not a case where is drawn in question the *validity of a statute of a state,* and that, therefore, the review should have been by *certiorari,* and not by *writ of error.*

But it will be noted that at all stages of this case it was specifically claimed that the statute of Minnesota was invalid. It is perhaps true that this position necessarily includes a claim of an immunity under the laws and Constitution of the United States, but that immunity could arise *only because the statute of Minnesota was invalid.* If the judgment in this case cannot be reviewed by writ of error, no case ever can be, as whenever a Federal question is raised, it may be proprly said that a right or immunity is claimed under the Constitution or laws of the United States. Thus if a state statute is attacked as depriving a person of life, liberty or property without due process of law, it may properly be said that that person claims an immunity from the state statute under the Constitution of the United States, and where a federal statute has been held invalid, and it is sought to review the judgment in this court, it may properly be said that a right or privilege is claimed under a statute of the United States.

But it could hardly be claimed that either case could not be reviewed by writ of error. Such a rule would render the first paragraph of Section 237 with respect to writs of error a nullity.

The Act of September 6, 1916, was passed to relieve this Court from cases arising under the Federal Employers' Liability Act and other acts of Congress where *only* the

construction of that act was involved and where *only* an immunity was claimed under the laws of the United States. But it was never intended to deprive this Court of jurisdiction to review by writ of error cases where the validity of a state statute was attacked, because the claim of invalidity of the state statute involved a claim of immunity under the Constitution and laws of the United States.

What was said in P. & R. Coal & Iron Co. v. Gilbert, 38 S. C. R. 58, decided November 26th, 1917, referred to in defendant in error's brief, that

> "Where any title, right, privilege or immunity is claimed * * * the judgment or decree can be reviewed *only* upon a writ of certiorari,"

does not apply to a case where the invalidity of a state statute is asserted and a writ of error obtained to review a decision holding the statute valid. Mr. Justice Van Devanter was careful to say:

> "Neither did it challenge the validity of a statute of or an authority exercised under any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States."

What Mr. Justice Van Devanter would have said, had his attention been called to the precise point, would be to make the sentence quoted in the brief of defendant in error read as follows:

> "Where any (other) title, right, privilege or immunity is claimed, etc."

Because indirectly we might be deemed to claim an immunity under the laws of the United States and, therefore, possibly might have come to this Court by certiorari, does not deprive us of the right given by the first paragraph in Section 237, to review the judgment by writ of error, where we claim the state statute invalid because

repugnant to the laws and Constitution of the United States.

It is true that a proper consideration of this case involves a construction of the Federal Employers' Liability Act. But this is only incidental. It is claimed that the state statute is repugnant to the Federal Employers' Liability Act. To ascertain whether it is repugnant, it is necessary to construe the Federal Employers' Liability Act and ascertain its true meaning and effect.

But defendant in error claims that we do not assert a claim of invalidity of a Minnesota statute because no claim is made that the statute is invalid in all cases and under all circumstances. But this is unnecessary. What we do assert is that the statute is invalid as to the particular facts of this case. This Court is concerned only with the case before it and if it is asserted that the state statute is invalid in the one case before it and as applied to the facts in that particular case, it matters not that the Court may imagine other facts and circumstances as applied to which the statute would not be invalid.

Defendant in error says that we do not claim that the Minnesota statute is invalid as to this particular case, but that it is *inoperative* and *has no application* thereto, calling attention to the language of the motion to direct a verdict (Page 47 of the Record):

> "The statute of the State of Minnesota, in so far as it purports or attempts to give an attorney a lien thereon, *is ineffectual*," etc.

and the language of the motion for judgment notwithstanding the verdict (Page 55 of the Record):

> "The statute of Minnesota, * * * in so far as the same purports to impose a lien upon such a cause

> of action arising under the Act of Congress is *inoperative* and *ineffectual* and said statute as construed by the Court is an *unlawful attempt* to regulate and impose an additional burden on interstate commerce, etc."

In passing it should be noted that in the Assignments of Error upon the appeal from the order (page 60 of the Record), and also in the Assignments of Error upon the appeal from the judgment (pages 69 and 70 of the Record), it is specifically claimed that the statute is *void* and *invalid*. However that may be, defendant in error attempts to make a distinction where there is no difference, between a claim that the statute is *inoperative* and *ineffectual* as to a cause of action arising under the Federal Act, and a claim that the statute is *invalid* as applied to a cause of action arising under the Act. The Court is not asked to construe the Minnesota statute and hold that *in terms it does not apply* to a cause of action under the Federal Act because it is conceded in terms it applies to all causes of action. What the Court is asked to do is to hold that the statute is inoperative and ineffectual *because it is invalid*. The reverse of the proposition is, of course, true, that if it is *invalid*, it necessarily is *inoperative* and *ineffectual*, the same as any void and invalid statute.

It will not, we think, be improper to state that before making petition for this writ of error, the question which counsel raises was carefully considered and the conclusion reached that writ of error was the proper remedy. If we are in error about it, it is an error made after careful consideration of the Amendment of September 6, 1916.

It is submitted that this case is precisely within the terms of the first paragraph of Section 237 of the Judicial

Code as amended and that writ of error was the proper remedy.

II. "NO FEDERAL QUESTION PROPERLY RAISED, THE NON-FEDERAL QUESTIONS INVOLVED ON WHICH TO SUPPORT JUDGMENT."

Under this head, defendant suggests that the writ of error should be dismissed for the following reasons (page 16 of brief):

"a. There is nothing in the pleadings or evidence whereon to show that the injury was sustained in interstate commerce or that the original cause of action in fact came within the purview of the Federal Employers' Liability Act."

"b. There was one or more non-Federal questions on which the judgment below was or might have been based."

"c. There is nothing in the judgment on which the writ of error is based by which to conclude that the case was disposed of upon a Federal question."

We shall discuss these propositions in their order:

a. In the original complaint, plaintiff alleged that both plaintiff and defendant were engaged in interstate commerce. Plaintiff in error in his answer, denied that plaintiff was engaged in interstate commerce and alleged by way of defense the Illinois Workmen's Compensation Act, which provided that:

> "The remedy given by said law is made exclusive and the right to maintain common law actions to regulate damages like those claimed by plaintiff herein, is specifically barred and prohibited. In and by the terms of said law this action is not maintainable and the remedy of plaintiff herein is to make application to

said Industrial Board and defendant pleads that plaintiff should not be allowed to maintain this action because of the remedy given him by said statute of the State of Illinois." (Page 6 of the Record.)

By his Reply, (Page 6 of the Record) plaintiff "admits the existence of the statute pleaded in said answer."

These pleadings were all introduced in evidence by the defendant in error himself (Page 13 of the Record). Therefore, under defendant in error's own showing and under the pleadings, plaintiff either had a cause of action under the Federal Act, *or he had no cause of action at all* and consequently no cause of action at all upon which a lien could have been imposed because under the Illinois Compensation Act, which was admitted in the Reply, plaintiff, if not engaged in interstate commerce, could only apply to the Illinois Industrial Board and could have no recovery in the Minnesota courts. By settlement with the plaintiff, the plaintiff in error recognized and admitted the existence of a cause of action as pleaded in the complaint, to-wit: under the Federal Act. The only cause of action upon which a lien could have been imposed was the cause of action pleaded in the complaint under the Federal Employers' Liability Act. The ultimate effect of the allegations of the answer was only that plaintiff had in fact no cause of action, but by the settlement the cause of action was recognized and established.

Davis v. Great Northern, 128 Minn. 354, 151 N. W. 128.

Regardless of the merits of this as an original proposition, the Supreme Court of Minnesota passed upon the question and *treated the cause of action as one arising*

under the Federal Employers' Liability Act. Such a holding by the Minnesota Supreme Court is binding upon this Court and this Court must consider the proposition from the same viewpoint as did the state court. *Illinois Central v. Messina*, 240 U. S. 398, 36 S. C. R. 368.

For some reason which is not apparent, defendant in error claims that his right to relief could be based upon either of two sub-sections of the Minnesota statute complained of, viz: Sub-section 3 giving an attorney a lien on the cause of action and Sub-section 4 giving an attorney a lien upon money in the hands of the adverse party. (See Page 14 of brief of defendant in error.)

Just what difference it makes under which sub-section defendant in error's recovery is had, counsel does not make clear, but if material, it is quite apparent that plaintiff's judgment was and could be based only upon Sub-section 3, giving a lien upon the cause of action. This is clear for the following reasons:

1. The complaint in intervention is expressly based on Sub-section 3, (See page 10 of the Record (17).)

> "This intervener had, and still has, *an attorney's lien upon said cause of action* for services rendered aforesaid."

2. The Minnesota Supreme Court had expressly held that a lien, such as defendant in error asserted, could not arise under Sub-section 4 and that Sub-section 4 applied only where there had been a judgment or verdict:

> "The section of the statute which gives a lien upon money in the hands of the adverse party implies that the cause of action shall ripen into and become vested in a judgment."
>
> *Anderson v. Itasca Lumber Co.*, 86 Minn. 480, 91 N. W. 12.

3. The Court below construed defendant in error's lien as coming under Sub-section 3. See syllabus of the opinion, which is prepared by the Court. (Page 62 of the Record):

> "*An attorney has a lien upon a cause of action* arising under the Federal Employers' Liability Act when an action thereon is instituted in the courts of this state and in such action the lien may be enforced."

b. We understand counsel's proposition to be that the Minnesota Supreme Court *might* have decided that the original cause of action upon which the lien was based was not a cause of action under the Federal Employers' Liability Act, and that, therefore the case *might* have been decided upon a non-Federal question. A sufficient answer to this suggestion is the fact that in its opinion on the appeal from the order denying a new trial, the Supreme Court of Minnesota expressly decided the case upon the theory *that the cause of action did arise under the Federal Act* and expressly decided that the Minnesota statute was not invalid as applied thereto. (See pages 63 and 64 of the Record.) Nothing further need be said upon this point, but see the following case:

> "And although there are expressions in the opinion below that raise a doubt, *the fact that the Supreme Court thought it necessary to construe the Act indicates that the construction was material to the result.*"
>
> *Illinois Central Ry. Co. v. Messina*, 36 S. C. R. 368; 240 U. S. 395.

c. We take it that counsel's suggestion means that while upon the appeal from the order denying a motion for a new trial, the Court decided that the cause of action *arose under the Federal Act* and, therefore, directly decided the Federal question, yet upon the appeal from the

judgment it *might have decided the case on other grounds.* This suggestion is wholly without merit and in making same, counsel shows his unfamiliarity with the Minnesota practice. Cases in Minnesota are rarely taken to the Supreme Court upon an appeal from anything other than an order. An appeal from a judgment is comparatively a rarity, except in cases such as this one, where it is desired to get a final judgment for review in this Court. Counsel makes the suggestion that after the order was affirmed on the first appeal, no new testimony was introduced, which is quite true, for the very good reason, among others, that it could not be done. The only thing possible, when the order denying a new trial was affirmed, was for the Court to enter judgment on the verdict. The appeal from the order decided every question in the case which was raised, or which could have been raised, and the opinion on the appeal from the order, was the law of the case. *Jordan v. N. W. Electric Co.*, 117 Minn. 209, 135 N. W. 529. The only error assigned on the appeal from the judgment was the invalidity of the statute. This having been already passed upon and dealt with in full in the prior opinion, the judgment was affirmed in a *per curiam* opinion. The appeal from the judgment was only for the purpose of getting a final judgment to be reviewed by this Court. This practice is very familiar to this Court, as it has been followed in practically all cases which have come up from the State of Minnesota. The suggestion made is without merit.

III. "ALLEGED FEDERAL QUESTION WITHOUT MERIT."

We have discussed the merits of the case in our original brief, already on file.

The motion to dismiss or affirm should be denied, and the judgment of the Supreme Court of Minnesota reversed.

Respectfully submitted,

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DICKINSON, AS RECEIVER OF THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *v.* STILES.

ERROR TO THE SUPREME COURT OF THE STATE OF MINNESOTA.

No. 735. Argued April 18, 19, 1918.—Decided April 29, 1918.

There is no inconsistency between the Employers' Liability Act and the application to cases arising under it in the state court of a general state law giving the attorney a lien on his client's cause of action and rendering the defendant directly liable to the attorney.

Where this question was called to the attention of the state trial and supreme courts and discussed by the latter, upon an intervention of the attorney in an action wherein the complaint stated a case under the act, this court has jurisdiction by writ of error to review the judgment sustaining the lien.

137 Minnesota, 410, affirmed.

THE case is stated in the opinion.

Mr. Edward S. Stringer, with whom *Mr. McNeil V. Seymour*, *Mr. Thomas P. Littlepage* and *Mr. Sidney F. Taliaferro* were on the briefs, for plaintiff in error.

Mr. George H. Lamar for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a writ of error to correct a judgment of the Supreme Court of Minnesota which sustained the validity of a statute of the State held applicable to this case and alleged by the plaintiff in error to be repugnant to the Constitution and laws of the United States when so applied. The facts that raise the question are simple. One Holloway sued the plaintiff in error under the Employers' Liability Act for personal injuries and engaged the de-

fendant in error, Stiles, as his attorney, agreeing to pay him one-third of the amount recovered by suit or settlement. The statutes of Minnesota give the attorney a lien upon the cause of action. Gen. Stats. of 1913, § 4955. Before trial the plaintiff in error settled by paying $6,500. Stiles intervened in the cause and claimed his fee pursuant to his contract. There was a trial which ended in a judgment for Stiles—the trial Court ruling that the Minnesota statute was effective to impose a lien upon a cause of action arising under the Act of Congress relating to the liability of carriers by railroad to their employees. April 22, 1908, c. 149, 35 Stat. 65. April 5, 1910, c. 143, 36 Stat. 291. The Supreme Court of the State sustained this ruling, 137 Minnesota, 410, and subsequently, without further discussion, affirmed the judgment for Stiles.

It is argued for the defendant in error that it does not appear sufficiently in the record that the case turned upon the ruling supposed. But the original declaration was for an injury alleged to have been received in interstate commerce and, whatever the answer denied, that was the claim that was settled. The question was called to the attention of the trial Court and was discussed at length by the Supreme Court. We perceive no ground for the motion to dismiss.

Coming to the merits, cases that declare that the acts of Congress supersede all state legislation on the subject of the liability of railroad companies to their employees have nothing to do with the matter. The Minnesota statute does not meddle with that. It affects neither the amount recovered nor the persons by whom it is recovered, nor again the principles of distribution. It deals only with a necessary expense of recovery. Congress cannot have contemplated that the claims to which its action gave rise or power would be paid in all cases without litigation, or that suits would be tried by lawyers for nothing, yet

it did not regulate attorneys' fees. It contemplated suits in state courts and accepted state procedure in advance. *Minneapolis & St. Louis R. R. Co.* v. *Bombolis*, 241 U. S. 211. *Louisville & Nashville R. R. Co.* v. *Stewart*, 241 U. S. 261. We see no reason why it should be supposed to have excluded ordinary incidents of state procedure. Before the Carmack Amendment it was held not to invalidate state legislation requiring, under a penalty, prompt settlement of claims for loss of freight in the State, *Atlantic Coast Line R. R. Co.* v. *Mazursky*, 216 U. S. 122; see *Charleston & Western Carolina Ry. Co.* v. *Varnville Furniture Co.*, 237 U. S. 597; or, since that amendment, allowing in the costs a moderate attorney's fee for small claims unsuccessfully disputed, *Missouri, Kansas & Texas Ry. Co.* v. *Harris*, 234 U. S. 412, although both laws affect commerce among the States.

The statutes referred to in the last cited cases imposed liability for an additional sum. The present one does not. We presume that it would not be contended that the Employers' Liability Act prevented the assignment of a judgment under it in such form as was allowed by the law of Minnesota, or that it allowed the defendant to disregard such an assignment after notice. Nor do we perceive any different rule for an assignment of judgment or cause of action by way of security, which under the Minnesota statute the contract with Holloway brought to pass. It is true that this security is made effectual by requiring payment to the attorney, *Davis* v. *Great Northern Ry. Co.*, 128 Minnesota, 354, 358, and this may be said to result in requiring the judgment debtor to split up the payment. But surely there is nothing in that liability, seemingly common to all Minnesota judgments, *Wheaton* v. *Spooner*, 52 Minnesota, 417, 423, that introduces an interference with the Act of Congress that otherwise would not exist. In cases where a partial assignment is provided for irrespective of attorneys' fees we

should not expect to hear the suggestion of such a point. The whole case is simply that the State allows the attorney employed to collect a claim to be subrogated to the rights of the claimant so far as to secure the attorney's fees. We see no reason why it should not.

Judgment affirmed.